

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

In the Matter of the Accusation Against:

**ROSS MEDICAL PHARMACY
1818 S. Western Avenue
Los Angeles, CA 90006**

Pharmacy Permit No. PHY 39267

And

**SEUNG YOL KIM
5351 Quail Canyon Road
La Crescenta, CA 40147**

Pharmacist License No. RPH 40147

Respondents.

Case No. 5852

OAH No. 2017091063

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 at 5:00 p.m. on June 7, 2018.

It is so ORDERED on May 8, 2018.

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



By

Amy Gutierrez, Pharm.D.
Board President

1 XAVIER BECERRA
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 MICHAEL A. CACCIOTTI
Deputy Attorney General
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Attorneys for Complainant
7

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

10 In the Matter of the Accusation Against:

Case No. 5852

11 **ROSS MEDICAL PHARMACY**
12 **1818 S. Western Avenue**
13 **Los Angeles, CA 90006**

OAH No. 2017091063

14 **Pharmacy Permit No. PHY 39267**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 And

16 **SEUNG YOL KIM**
17 **5351 Quail Canyon Road**
La Crescenta, CA 91214

18 **Pharmacist License No. RPH 40147**

19 Respondents.

20
21 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
22 entitled proceedings that the following matters are true:

23 PARTIES

24 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
25 (Board). She brought this action solely in her official capacity and is represented in this matter by
26 Xavier Becerra, Attorney General of the State of California, by Michael A. Cacciotti, Deputy
27 Attorney General.
28

1 documents; the right to reconsideration and court review of an adverse decision; and all other
2 rights accorded by the California Administrative Procedure Act and other applicable laws.

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

5 CULPABILITY

6 10. Respondents admit the truth of each and every charge and allegation in Accusation
7 No. 5852.

8 11. Respondent Ross Medical Pharmacy agrees that its Pharmacy Permit is subject to
9 discipline and he agrees to be bound by the Board's probationary terms as set forth in the
10 Disciplinary Order below.

11 12. Respondent Kim agrees that his Pharmacy Permit is subject to discipline and he
12 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

13
14 CONTINGENCY

15 13. This stipulation shall be subject to approval by the Board. Respondents understand
16 and agree that counsel for Complainant and the staff of the Board may communicate directly with
17 the Board regarding this stipulation and settlement, without notice to or participation by
18 Respondents or their counsel. By signing the stipulation, Respondents understand and agree that
19 they may not withdraw their agreement or seek to rescind the stipulation prior to the time the
20 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and
21 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for
22 this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall
23 not be disqualified from further action by having considered this matter.

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

27 15. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
28 integrated writing representing the complete, final, and exclusive embodiment of their agreement.

1 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
2 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
3 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
4 writing executed by an authorized representative of each of the parties.

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

8 **DISCIPLINARY ORDER**

9 IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 39267 issued to Respondent
10 Ross Medical Pharmacy, Seung Yol Kim is revoked.

11 IT IS ALSO HEREBY ORDERED that Pharmacist License No. RPH 40147 issued to
12 Respondent Seung Yol Kim is revoked. However, the revocation is stayed and Respondent Kim
13 is placed on probation for six (6) years on the following terms and conditions.

14 1. **Suspension**

15 As part of probation, respondent is suspended from the practice of pharmacy beginning on
16 June 1, 2018, until such time in which he completes at least six (6) hours of remedial education
17 on the topics of either prescription drug abuse and/or corresponding liability, and provides
18 satisfactory proof. The remedial education program must be approved by the Board or its
19 designee. If Respondent completes the continuing education course offered jointly by the Board
20 and the U.S. Drug Enforcement Administration, entitled "CURES, Prescription Drug Abuse and
21 Preventing Drug Diversion – What a Pharmacist Needs to Know," on May 2018, in San
22 Francisco, California, then no period of suspension shall be automatically imposed on the
23 effective date of this decision.

24 During suspension, respondent shall not enter any pharmacy area or any portion of the
25 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
26 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
27 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
28 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient

1 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
2 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
3 and devices or controlled substances.

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

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

9 **2. Obey All Laws**

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

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

- 13 • an arrest or issuance of a criminal complaint for violation of any provision of the
14 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
15 substances laws
- 16 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
17 criminal complaint, information or indictment
- 18 • a conviction of any crime
- 19 • discipline, citation, or other administrative action filed by any state or federal agency
20 which involves Respondent's pharmacist license or which is related to the practice of
21 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging
22 for any drug, device or controlled substance.

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

24 **3. Report to the Board**

25 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
26 designee. The report shall be made either in person or in writing, as directed. Among other
27 requirements, Respondent shall state in each report under penalty of perjury whether there has
28 been compliance with all the terms and conditions of probation. Failure to submit timely reports

1 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
2 in submission of reports as directed may be added to the total period of probation. Moreover, if
3 the final probation report is not made as directed, probation shall be automatically extended until
4 such time as the final report is made and accepted by the board.

5 **4. Interview with the Board**

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

11 **5. Cooperate with Board Staff**

12 Respondent shall cooperate with the board's inspection program and with the board's
13 monitoring and investigation of Respondent's compliance with the terms and conditions of his
14 probation. Failure to cooperate shall be considered a violation of probation.

15 **6. Continuing Education**

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

18 **7. Notice to Employers**

19 During the period of probation, Respondent shall notify all present and prospective
20 employers of the decision in case number 5852 and the terms, conditions and restrictions imposed
21 on Respondent by the decision, as follows:

22 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
23 Respondent undertaking any new employment, Respondent shall cause his direct supervisor,
24 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
25 tenure of employment) and owner to report to the board in writing acknowledging that the listed
26 individual(s) has/have read the decision in case number 5852, and terms and conditions imposed
27 thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or
28 supervisor(s) submit timely acknowledgment(s) to the board.

1 If Respondent works for or is employed by or through a pharmacy employment service,
2 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
3 licensed by the board of the terms and conditions of the decision in case number 5852 in advance
4 of the respondent commencing work at each licensed entity. A record of this notification must be
5 provided to the board upon request.

6 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
7 (15) days of Respondent undertaking any new employment by or through a pharmacy
8 employment service, Respondent shall cause his direct supervisor with the pharmacy employment
9 service to report to the board in writing acknowledging that he has read the decision in case
10 number 5852 and the terms and conditions imposed thereby. It shall be Respondent's
11 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely
12 acknowledgment(s) to the board.

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

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

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

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

26 **9. Reimbursement of Board Costs**

27 As a condition precedent to successful completion of probation, Respondent shall pay to the
28 board its costs of investigation and prosecution in the amount of \$27,305.75. Respondent shall

1 make said payment according to a plan approved by the Board or its designee. Failure to pay
2 costs by the plan as directed shall be considered a violation of probation.

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

5 **10. Probation Monitoring Costs**

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

10 **11. Status of License**

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

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

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

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

26 Upon acceptance of the surrender, Respondent shall relinquish his pocket and wall license
27 to the board within ten (10) days of notification by the board that the surrender is accepted.
28 Respondent may not reapply for any license from the board for three (3) years from the effective

1 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
2 of the date the application for that license is submitted to the board, including any outstanding
3 costs.

4 **13. Notification of a Change in Name, Residence Address, Mailing Address or**
5 **Employment**

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

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

13 **14. Tolling of Probation**

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

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

25 It is a violation of probation for Respondent's probation to remain tolled pursuant to the
26 provisions of this condition for a total period, counting consecutive and non-consecutive months,
27 exceeding thirty-six (36) months.
28

1 "Cessation of practice" means any calendar month during which Respondent is
2 not practicing as a pharmacist for at least forty (40) hours, as defined by Business and
3 Professions Code section 4000 et seq . "Resumption of practice" means any calendar
4 month during which Respondent is practicing as a pharmacist for at least forty (40)
5 hours as a pharmacist as defined by Business and Professions Code section 4000 et
6 seq.

7 **15. Violation of Probation**

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

13 If Respondent violates probation in any respect, the board, after giving Respondent notice
14 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
15 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
16 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
17 a petition to revoke probation or an accusation is filed against Respondent during probation, the
18 board shall have continuing jurisdiction and the period of probation shall be automatically
19 extended until the petition to revoke probation or accusation is heard and decided.

20 **16. Completion of Probation**

21 Upon written notice by the board or its designee indicating successful completion of
22 probation, Respondent's license will be fully restored.

23 **17. Remedial Education**

24 Within ninety (90) days of the effective date of this decision, Respondent shall submit to
25 the board or its designee, for prior approval, an appropriate program of remedial education related
26 to prescription drug abuse and/or corresponding liability. The program of remedial education
27 shall consist of at least six (6) hours, which shall be completed every year of probation at
28 Respondent's own expense. All remedial education shall be in addition to, and shall not be

1 credited toward, continuing education (CE) courses used for license renewal purposes.

2 Failure to timely submit or complete the approved remedial education shall be considered a
3 violation of probation. The period of probation will be automatically extended until such
4 remedial education is successfully completed and written proof, in a form acceptable to the board,
5 is provided to the board or its designee.

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

11 18. **Supervised Practice**

12 During the period of probation, Respondent shall practice only under the supervision of a
13 licensed pharmacist not on probation with the board. Upon and after the effective date of this
14 decision, Respondent shall not practice pharmacy and his license shall be automatically
15 suspended until a supervisor is approved by the Board or its designee. The supervision shall be,
16 as required by the Board or its designee, either:

17 Continuous – At least 75% of a work week

18 Substantial - At least 50% of a work week

19 Partial - At least 25% of a work week

20 Daily Review - Supervisor's review of probationer's daily activities within 24 hours

21 Within thirty (30) days of the effective date of this decision, Respondent shall have his
22 supervisor submit notification to the Board in writing stating that the supervisor has read the
23 decision in case number 5852 and is familiar with the required level of supervision as determined
24 by the Board or its designee. It shall be the Respondent's responsibility to ensure that his
25 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
26 Board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
27 acknowledgements to the Board shall be considered a violation of probation.

28 If Respondent changes employment, it shall be the Respondent's responsibility to ensure

1 that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely
2 acknowledgement(s) to the Board. Respondent shall have his new supervisor, within fifteen (15)
3 days after employment commences, submit notification to the Board in writing stating the direct
4 supervisor and pharmacist-in-charge have read the decision in case number 5852 and is familiar
5 with the level of supervision as determined by the board. Respondent shall not practice pharmacy
6 and his license shall be automatically suspended until the Board or its designee approves a new
7 supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
8 acknowledgements to the board shall be considered a violation of probation.

9 Within ten (10) days of leaving employment, respondent shall notify the Board in writing.

10 During suspension, respondent shall not enter any pharmacy area or any portion of the
11 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
12 drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices
13 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
14 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
15 consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the
16 Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
17 and controlled substances. Respondent shall not resume practice until notified by the Board.

18 During suspension, Respondent shall not engage in any activity that requires the
19 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
20 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
21 designated representative for any entity licensed by the board.

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

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

24 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
25 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
26 partnership, or corporation currently or hereinafter licensed by the Board. Respondent shall sell
27 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
28 days following the effective date of this decision and shall immediately thereafter provide written

1 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
2 documentation thereof shall be considered a violation of probation.

3 20. Ethics Course

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

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

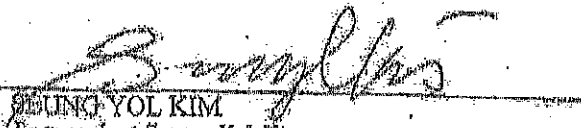
10 ACCEPTANCE

11 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
12 discussed it with my attorney, Benjamin J. Fenton, Esq.. I understand the stipulation and the
13 effect it will have on my Pharmacy Permit, and Pharmacist License. I enter into this Stipulated
14 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
15 bound by the Decision and Order of the Board of Pharmacy.

16
17 DATED: March 26, 2018


18 ROSS MEDICAL PHARMACY, SEUNG YOL KIM
Respondent Ross Medical Pharmacy

19
20 DATED: March 26, 2018


21 SEUNG YOL KIM
Respondent Seung Yol Kim

22 I have read and fully discussed with Respondents Ross Medical Pharmacy, Seung Yol Kim
23 and Seung Yol Kim the terms and conditions and other matters contained in the above Stipulated
24 Settlement and Disciplinary Order. I approve its form and content.

25 DATED: 3/26/19


26 BENJAMIN J. FENTON, ESQ.
attorney for Respondent

1 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
2 documentation thereof shall be considered a violation of probation.

3 **20. Ethics Course**

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

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

10 ACCEPTANCE

11 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
12 discussed it with my attorney, Benjamin J. Fenton, Esq.. I understand the stipulation and the
13 effect it will have on my Pharmacy Permit, and Pharmacist License. I enter into this Stipulated
14 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
15 bound by the Decision and Order of the Board of Pharmacy.

16

17 DATED: _____

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ROSS MEDICAL PHARMACY, SEUNG YOL KIM
Respondent Ross Medical Pharmacy

19

20 DATED: _____

21

SEUNG YOL KIM
Respondent Seung Yol Kim

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I have read and fully discussed with Respondents Ross Medical Pharmacy, Seung Yol Kim
and Seung Yol Kim the terms and conditions and other matters contained in the above Stipulated
Settlement and Disciplinary Order. I approve its form and content.

DATED: _____

BENJAMIN J. FENTON, ESQ.
Attorney for Respondent

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ENDORSEMENT

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

Dated: 3/26/18

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General



MICHAEL A. CACCIOTTI
Deputy Attorney General
Attorneys for Complainant

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Exhibit A
Accusation No. 5852

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Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 LINDA L. SUN
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Attorneys for Complainant
7

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

10 In the Matter of the Accusation Against:

Case No. 5852

11 **ROSS MEDICAL PHARMACY**
12 **1818 S. Western Avenue**
13 **Los Angeles, CA 90006**

A C C U S A T I O N

14 **Pharmacy Permit No. PHY 39267**

15 And

16 **SEUNG YOL KIM**
17 **5351 Quail Canyon Road**
La Crescenta, CA 91214

18 **Pharmacist License No. RPH 40147**

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, Department of Consumer Affairs.

25 2. On or about April 6, 1993, the Board of Pharmacy issued Pharmacy Permit Number
26 PHY 39267 to Ross Medical Pharmacy, Seung Yol Kim (Respondents). The Pharmacy Permit
27 was in full force and effect at all times relevant to the charges brought herein and will expire on
28 April 1, 2017, unless renewed.

1 naturopathic doctor pursuant to Section 3640.7, or upon an order to furnish drugs or transmit a
2 prescription from a certified nurse-midwife, nurse practitioner, physician assistant, naturopathic
3 doctor pursuant to Section 3640.5, or pharmacist acting within the scope of his or her practice.

4 "(b) "Dispense" also means and refers to the furnishing of drugs or devices directly to a
5 patient by a physician, dentist, optometrist, podiatrist, or veterinarian, or by a certified nurse-
6 midwife, nurse practitioner, naturopathic doctor, or physician assistant acting within the scope of
7 his or her practice."

8 8. Section 4113, subdivisions (c) and (d), state:

9

10 "(c) The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all
11 state and federal laws and regulations pertaining to the practice of pharmacy.

12 9. Section 4301 of the Code states, in pertinent part:

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

16

17 "(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a)
18 of Section 11153 of the Health and Safety Code.

19 "(e) The clearly excessive furnishing of controlled substances in violation of subdivision (a)
20 of Section 11153.5 of the Health and Safety Code. Factors to be considered in determining
21 whether the furnishing of controlled substances is clearly excessive shall include, but not be
22 limited to, the amount of controlled substances furnished, the previous ordering pattern of the
23 customer (including size and frequency of orders), the type and size of the customer, and where
24 and to whom the customer distributes its product.

25

26 "(j) The violation of any of the statutes of this state, or any other state, or of the United
27 States regulating controlled substances and dangerous drugs.

28

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **CONTROLLED SUBSTANCES**

4 13. **“Alprazolam”**, the generic name for Xanax, is a Schedule IV controlled substance
5 pursuant to Health and Safety Code section 11057, subdivision (d)(1) and is a dangerous drug
6 pursuant to Code section 4022.

7 14. **“Phenergan with Codeine”** is the brand name for Promethazine with Codeine. It is
8 a Schedule V controlled substance pursuant to Health and Safety Code section 11058(c)(1) and is
9 a dangerous drug pursuant to Business and Professions Code section 4022.

10 15. **“Carisoprodol”**, also known as Soma, is a Schedule IV controlled substance
11 pursuant to 21 Code of Federal Regulations 1308.17, subdivision (c)(6) and is a dangerous drug
12 pursuant to Code section 4022.

13 16. **“Hydrocodone/acetaminophen”** is a Schedule II controlled substance pursuant to
14 Health and Safety Code section 11056, subdivision (e)(4) and is a dangerous drug pursuant to
15 Code section 4022.

16 **BACKGROUND RE BOARD INVESTIGATION**

17 **AND INSPECTION OF PHARMACY ON FEBRUARY 25, 2014**

18 17. On or about September 25, 2013, the Board received a crime report from WeTip
19 which alleged that 1818 N. Western Avenue, Room 500, Los Angeles paid \$20 to use patient
20 names and billed their insurances for services which were never provided to them. According to
21 WeTip, the manager kept the medicine that Dr. M.G. wrote after a “fake visit” and the pharmacy
22 downstairs was also in on this scam. Investigation revealed that Ross Medical Pharmacy (and/or
23 the pharmacy) is located on the first floor of Southfork Medical Clinic (Southfork Clinic and/or
24 clinic) and dispensed erroneous and uncertain prescriptions that were prescribed by the clinic.

25 18. On or about February 25, 2014, the Board’s Inspector went to 1818 S. Western
26 Avenue, Room 5, Los Angeles, CA 90006 and knocked on the door, but no one answered. A
27 maintenance person indicated that Southfork Clinic had closed down. The Board’s Inspector
28 went to the first floor of the same building and conducted an inspection of Ross Medical

1 Pharmacy. Pharmacy technician L.B. told the Inspector they stopped taking prescriptions from
2 Southfork Clinic and the pharmacy does not dispense prescriptions from out of the area patients.
3 Respondent Kim stated that a few months ago, Dr. M.G. quit or was fired from Southfork Clinic
4 and a new prescriber named Dr. P.M. introduced himself to Kim and said he was a surgeon and
5 pain management prescriber. On February 22, 2014, a SWAT team came and arrested everyone
6 in the clinic.

7 19. The Inspector reviewed the numerous books of Ross Medical Pharmacy's
8 prescriptions, and found an average of about five patients' prescriptions per day were dispensed
9 by the pharmacy and written at the clinic. She collected a sample of those prescription hardcopies
10 and daily reports for various days to determine which percentage of prescriptions they dispensed
11 were for the clinic.

12 20. The Inspector asked Respondent Kim about his corresponding responsibilities as a
13 pharmacist, and he was confused. He then asked Respondent if it was within the scope of
14 practice for a pain management prescriber to write extensive number of promethazine with
15 codeine for cough. Respondent Kim replied "yes", he believed it was within his scope of
16 practice.

17 21. Between January 1, 2013 and October 18, 2013, Respondent Ross Medical Pharmacy
18 and Respondent Kim filled prescriptions written by Dr. P.M. and Dr. M.G. of Southfork Clinic
19 for Promethazine with Codeine #240 and Alprazolam 2 mg #60. The Board's Inspector found the
20 following irregularities with these prescriptions, which Respondent Kim should have questioned:

- 21 • The same combination of medications prescribed by the two prescribers of the clinic for
22 most of their patients.
- 23 • Most patients were prescribed Alprazolam for muscle spasms and Promethazine with
24 Codeine for cough and congestion by the two prescribers of the clinic. The therapy was
25 not individualized for each patient.
- 26 • Respondent Kim should have questioned why a pain clinic is prescribing excessive amounts
27 of cough medications and referring them to a pain management specialist.

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1 **BACKGROUND RE BOARD INVESTIGATION**

2 **AND INSPECTION OF PHARMACY ON OCTOBER 27, 2015**

3 22. The Board received a notification from Cardinal Health indicating that Cardinal
4 Health suspended sales of controlled substances to Ross Medical Pharmacy due to irregular
5 controlled substance ordering at the pharmacy. The Board became aware of the arrest and federal
6 indictment of Dr. M.G. as described in an article released by the U.S. Attorney's Office. Details
7 of the article included the following:

- 8 • The article stated federal authorities arrested five defendants, including Dr. M.G., linked
9 to a narcotics trafficking ring, "that sold illegal prescriptions for cash and obtained drugs
10 that were shipped to Texas for sale on the black market."
- 11 • The article stated the operation was based in the Southfork Medical Clinic and alleged the
12 clinic was a "pill mill" where Dr. M.G. wrote prescriptions, "without a legitimate medical
13 purpose."
 - 14 ○ The article explained Dr. M.G. issued more than 10,000 prescriptions over a 15
15 month period and nearly 80 percent of the prescriptions were for hydrocodone or
16 alprazolam.
- 17 • The article described undercover operations conducted at Southfork Medical Clinic in
18 which Dr. M.G. gave undercover operators prescriptions for oxycodone and
19 promethazine/codeine syrup, "in exchange for the person returning to the clinic with the
20 bottles of the prescribed cough syrup."

21 23. On February 4, 2016, the U.S. Attorney's Office issued another press release
22 indicating Dr. M.G. "pleaded guilty to one count of illegally distributing oxycodone and one
23 count of money laundering." The article stated as part of her guilty plea, Dr. M.G. admitted "that
24 she issued prescriptions [for controlled substances] to Southfork 'patients' at the instructions of
25 the owner of the clinic...and that she knew the 'patients' did not actually need the drugs."
26 Additionally, Dr. M.G. acknowledged she "intentionally prescribed the drugs outside the usual
27 course of professional practice and without a legitimate medical purpose."

28 24. An inspection and investigation at Ross Medical Pharmacy determined that the
pharmacy did not fulfill its corresponding responsibility to dispense only legitimate prescriptions
in filling controlled substance prescriptions written by Dr. M.G. The Board's Inspector contacted
an employee at Cardinal Health who explained that Cardinal Health evaluated dispensing at Ross
Medical Pharmacy and determined the percentage of controlled substances purchased in cash was

1 significantly higher than the percentage of non-controlled substances purchased in cash. Frequent
2 cash payments for controlled substances are a red flag for potential drug diversion and abuse.

3 25. The California Controlled Substance Utilization and Review and Evaluation System
4 (CURES) database contains information about controlled substance prescriptions filled in
5 California, as reported by pharmacies. On August 11, 2015, the Board's Inspector requested and
6 reviewed a CURES report showing controlled substance prescriptions filled by Ross Medical
7 Pharmacy from August 1, 2012 to August 11, 2015, which showed the following:

- 8 • Dr. M.G. was the most frequent prescriber of controlled substances dispensed at Ross
9 Medical Pharmacy during the query period.
 - 10 ○ Ross Medical Pharmacy dispensed 5,806 controlled substance prescriptions
11 written by Dr. M.G. during the query period. Additionally, all of Dr. M.G.'s
12 prescriptions included in this report were filled between 11/28/2012 and
13 12/17/2013.
 - 14 ○ Over 98% of Dr. M.G.'s controlled substance prescriptions dispensed by Ross
15 Medical Pharmacy during the query period were alprazolam 2 mg, carisoprodol
16 350 mg, or a hydrocodone/acetaminophen combination.
 - 17 ○ Over 99% of Dr. M.G.'s controlled substance prescriptions were purchased in
18 cash, meaning not billed to prescription insurance.

19 26. The Board's investigation revealed the following facts: Between November 28,
20 2012 and December 17, 2013, Ross Medical Pharmacy filled 7,730 controlled substance
21 prescriptions written by Dr. M.G., despite multiple factors of irregularity indicating the
22 prescriptions were not written for legitimate medical indications and in the normal course of
23 practice. Objective factors suggesting the medical illegitimacy of these prescriptions included:

- 24 • The vast majority, 92.55%, of Dr. M.G.'s prescriptions filled at Ross Medical Pharmacy
25 were written for controlled substances.
 - 26 ○ The majority of Dr. M.G.'s prescriptions at Ross Medical Pharmacy were
27 commonly abused controlled substances.
 - 28 ■ Alprazolam 2 mg tablets, promethazine/codeine syrup, and carisoprodol
350 mg made of 56.67% of Dr. M.G.'s prescriptions at Ross Medical
Pharmacy.
 - Hydrocodone/acetaminophen combinations in various strengths accounted
for 34.42% of Dr. M.G.'s total prescribing.
 - 98.93% of Dr. M.G.'s prescriptions were purchased in cash, meaning not billed to
prescription insurance.

- 1 • There were at least 81 instances when Ross Medical Pharmacy processed prescriptions for
2 multiple patients receiving the same cocktail of medications from Dr. M.G. in short
3 periods of time, sometimes consecutively.
- 4 • There were at least 47 patients of Dr. M.G. with addresses on file at Ross Medical
5 Pharmacy which were significantly outside of the pharmacy's normal trading area
6 including many patients with addresses of record more than 100 miles away from Ross
7 Medical Pharmacy.
- 8 • There were many instances in which more than one patient with the same address received
9 the same or similar prescriptions from Dr. M.G. on the same day.
- 10 • Many of Dr. M.G.'s patients had the same or similar addresses on file at Ross Medical
11 Pharmacy. The dispensing records contained at least 13 addresses used as addresses of
12 record for 7 to 30 of Dr. M.G.'s patients. Additionally, the dispensing histories of the
13 patients with shared addresses were similar.

14 27. Additionally, Ross Medical Pharmacy failed to assume its corresponding
15 responsibility when, despite being registered to view the information in the CURES database, it
16 failed to access or evaluate Patient Activity Reports for patients with insurance coverage who
17 purchased controlled substances in cash. Ross Medical Pharmacy's failure to consult this
18 available reference resulted in dispensing controlled substances to patients who engaged in doctor
19 shopping and polypharmacy activity.

20 **CAUSE FOR DISCIPLINE**

21 **(Violation of Corresponding Responsibility to Verify Prescriptions)**

22 28. Respondents Ross Medical Pharmacy and Kim are subject to disciplinary action
23 under Code section 4301, subdivisions (d) and (j) for violating Health and Safety Code section
24 11153, subdivision (a), and Code section 4301, subdivision (o), and California Code of
25 Regulations, title 16, section 1761, subdivisions (a) and (b), in that between November 28, 2012
26 and December 17, 2013, Respondents failed to assume corresponding responsibility by failing to
27 validate the legitimacy of the prescriptions and/or reviewing the patients' drug therapy, by
28 dispensing prescriptions without regard to objective factors, and/or by dispensing
irregular/uncertain prescriptions. Complainant refers to and incorporates all the allegations
contained in paragraphs 17-27, as though set forth fully.

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PRAYER

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

1. Revoking or suspending Pharmacy Permit Number PHY 39267, issued to Ross Medical Pharmacy, Seung Yol Kim;
2. Revoking or suspending Pharmacist License RPH No. 40147, issued to Seung Yol Kim;
3. Ordering Seung Yol Kim to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
4. Taking such other and further action as deemed necessary and proper.

DATED:

11/13/16



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

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