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7

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

10 In the Matter of the Accusation Against:

Case No. 3335.

11 **TOP CARE PHARMACY,**
NGA NGUYEN,
12 President and Pharmacist-In-Charge
8121 California Avenue
13 South Gate, CA 90780

A C C U S A T I O N

14 Pharmacy Permit No. PHY 44224

15 **and**

16 **NGA TAN NGUYEN**
a.k.a. NGA NGUYEN
17 a.k.a. JIMMY NGUYEN
8121 California Avenue
18 South Gate, CA 90780

19 Pharmacist License No. RPH 43814

20 Respondents.

21
22 Complainant alleges:

23 **PARTIES**

- 24 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
25 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 26 2. On or about July 9, 1999, the Board of Pharmacy (Board) issued Pharmacy Permit
27 No. PHY 44224 to Top Care Pharmacy and Nga Tan Nguyen a.k.a. Nga Nguyen a.k.a. Jimmy
28 Nguyen, President (Respondent Pharmacy). Nga Tan Nguyen is and has been the Pharmacist-In-

1 Charge since August 9, 2004. The Pharmacy Permit was in full force and effect at all times
2 relevant to the charges brought herein and will expire on July 1, 2010, unless renewed.

3 3. On or about August 14, 1990, the Board issued Pharmacist License No. RPH 43814
4 to Nga Tan Nguyen a.k.a. Nga Nguyen a.k.a. Jimmy Nguyen (Respondent Nguyen). The
5 Pharmacist License was in full force and effect at all times relevant to the charges brought herein
6 and will expire on July 31, 2010, unless renewed.

7 JURISDICTION

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

11 STATUTORY PROVISIONS

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

16 6. Section 4005 states:

17 “(a) The board may adopt rules and regulations, not inconsistent with the laws of this
18 state, as may be necessary for the protection of the public. Included therein shall be the right to
19 adopt rules and regulations as follows: for the proper and more effective enforcement and
20 administration of this chapter; pertaining to the practice of pharmacy; relating to the sanitation of
21 persons and establishments licensed under this chapter; pertaining to establishments wherein any
22 drug or device is compounded, prepared, furnished, or dispensed; providing for standards of
23 minimum equipment for establishments licensed under this chapter; pertaining to the sale of drugs
24 by or through any mechanical device; and relating to pharmacy practice experience necessary for
25 licensure as a pharmacist.

26 (b) Notwithstanding any provision of this chapter to the contrary, the board may
27 adopt regulations permitting the dispensing of drugs or devices in emergency situations, and
28 permitting dispensing of drugs or devices pursuant to a prescription of a person licensed to

1 prescribe in a state other than California where the person, if licensed in California in the same
2 licensure classification would, under California law, be permitted to prescribe drugs or devices
3 and where the pharmacist has first interviewed the patient to determine the authenticity of the
4 prescription.

5 (c) The adoption, amendment, or repeal by the board of these or any other board rules
6 or regulations shall be in accordance with Chapter 3.5 (commencing with Section 11340) of Part
7 1 of Division 3 of Title 2 of the Government Code.

8 7. Section 4081 states:

9 "(a) All records of manufacture and of sale, acquisition, or disposition of
10 dangerous drugs or dangerous devices shall be at all times during business hours open to
11 inspection by authorized officers of the law, and shall be preserved for at least three years from
12 the date of making. A current inventory shall be kept by every manufacturer, wholesaler,
13 pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian,
14 laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked
15 certificate, license, permit, registration, or exemption under Division 2 (commencing with Section
16 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of
17 Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or
18 dangerous devices.

19 "(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary
20 food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or
21 representative-in-charge, for maintaining the records and inventory described in this section.

22 "(c) The pharmacist-in-charge or representative-in-charge shall not be
23 criminally responsible for acts of the owner, officer, partner, or employee that violate this section
24 and of which the pharmacist-in-charge or representative-in-charge had no knowledge, or in
25 which he or she did not knowingly participate."

26 8. Section 4115, subdivision (h), states that "[t]he pharmacist on duty shall be directly
27 responsible for the conduct of a pharmacy technician supervised by that pharmacist."
28

1 12. California Code of Regulations, title 16, section 1718, states:
2 "Current Inventory' as used in Sections 4081 and 4332 of the Business and
3 Professions Code shall be considered to include complete accountability for all dangerous drugs
4 handled by every licensee enumerated in Sections 4081 and 4332.
5 "The controlled substances inventories required by Title 21, CFR, Section 1304 shall
6 be available for inspection upon request for at least 3 years after the date of the inventory."

7 **COST RECOVERY**

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

11 **CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

12 14. "Norco - is the brand name for a pain medication combining narcotic hydrocodone
13 with non-narcotic acetaminophen and is classified as a Schedule III narcotic substance pursuant to
14 Health and Safety Code section 11056(e)(4) and a dangerous drug pursuant to Business and
15 Professions Code section 4022.

16 15. Vicodin - is a trade name for a medication combining Hydrocodone, a narcotic pain
17 medication, and Acetaminophen (e.g. Tylenol) a non-narcotic pain medication. It is a Schedule III
18 controlled substance pursuant to Health and Safety Code section 11056(e)(4), and is a dangerous
19 drug within the meaning of Business and Professions Code section 4022.

20 16. Vicodin ES - is a trade name for an extra strength version of Vicodin (described
21 above) which includes increased amounts of Hydrocodone and Acetaminophen.

22 **SUMMARY OF FACTS**

23 17. The following facts are common to all charges of the Accusation:
24 a. On or about June 21, 2007, Respondents filed a "Report of Theft or Loss of
25 Controlled Substances" ("Report") with the Board, in which they reported significant losses of
26 drug stock which were attributed to theft by a former employee, pharmacy technician J.M.
27 Mendoza (JMM), who was criminally prosecuted and convicted of violating Penal Code section
28 487(a) (Grand Theft) for said theft.

1 of Vicodin, and 112,833 tablets of Vicodin ES had been ordered and received but were not in
2 stock and unaccounted for.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Failure to Maintain Complete Acquisition/Disposition Records)**

5 18. Respondents TOP CARE PHARMACY and NGA TAN NGUYEN are subject to
6 disciplinary action under section 4300 for unprofessional conduct as defined in section 4301,
7 subdivisions (j) and (o), in conjunction with section 4081, subdivision (a), for failure to maintain
8 all records of acquisition and disposition for three (3) years from date of making and to keep a
9 current inventory of dangerous drugs. While Respondents' employee may have stolen or
10 destroyed purchase invoices to conceal diversion and theft, neither the missing invoices, nor the
11 large volume of controlled substances ordered and delivered to the pharmacy but missing from
12 stock – were discovered for almost two years, as described in paragraph 17 above.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Failure to Maintain Security of Pharmacy)**

15 19. Respondents TOP CARE PHARMACY and NGA TAN NGUYEN are subject to
16 disciplinary action under section 4300 for unprofessional conduct as defined in section 4301,
17 subdivisions (o), in conjunction with section 4005, section 4115 subdivision (h) and California
18 Code of Regulations, title 16, section 1714, subdivision (b), for failing to maintain its facilities,
19 space, fixtures, and equipment so that drugs are safely and properly prepared, maintained,
20 secured. Respondents failed to secure and maintain its facilities from unauthorized employees
21 ordering controlled substances, stealing or destroying controlled substance acquisition invoices,
22 and unlawfully distributing controlled substances, as described in paragraph 17 above.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(Failure to Maintain Security of Controlled Substances)**

25 20. Respondent NGA TAN NGUYEN is subject to disciplinary action under section 4300
26 for unprofessional conduct as defined in section 4301, subdivisions (o), in conjunction with
27 section 4005, section 4115 subdivision (h) and California Code of Regulations, title 16, section
28 1714, subdivision (d), for failing to secure the prescription department and provide effective

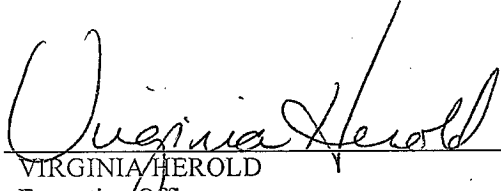
1 controls to prevent theft or diversion of 193,599 Norco, 453 Vicodin and 112,833 Vicodin ES,
2 controlled substances and dangerous drugs, and maintain records for such drugs, as described in
3 paragraphs 17 – 19, above.

4 PRAYER

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

- 7 1. Revoking or suspending Pharmacy Permit No. PHY 44224, issued to Top Care
8 Pharmacy;
9 2. Revoking or suspending Pharmacist License No. RPH 43814, issued to Nga Tan
10 Nguyen;
11 3. Ordering Top Care Pharmacy and Nga Tan Nguyen to pay the Board of Pharmacy the
12 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
13 Professions Code section 125.3; and
14 4. Taking such other and further action as deemed necessary and proper.

15
16 DATED: 9/25/09


17 VIRGINIA HEROLD
18 Executive Officer
19 Board of Pharmacy
20 Department of Consumer Affairs
21 State of California
22 Complainant

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