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

12 In the Matter of the Accusation Against:

Case No. 3695

13 **WALGREENS NO. 06683**
14 **5328 CYPRESS AVENUE,**
15 **VISALIA, CA 93277**
16 **PERMIT NO. PHY 46263**

ACCUSATION

17 **HANH LE PHAM**
18 **13231 CHESTNUT ST.**
19 **WESTMINSTER, CA 92683**
20 **PHARMACIST LICENSE NO. RPH 55049**

Respondents.

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 December 24, 2002, the Board of Pharmacy issued Pharmacy Permit
26 Number PHY 46263 to Walgreens No. 06683 (Respondent Walgreens). The Pharmacy Permit
27 was in full force and effect at all times relevant to the charges brought herein and will expire on
28 May 1, 2012, unless renewed.

1 "(5) Taking any other action in relation to disciplining him or her as the board in its
2 discretion may deem proper.

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4 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
6 shall have all the powers granted therein. The action shall be final, except that the propriety of
7 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
8 Civil Procedure."

9 7. Section 4301 of the Code states:

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

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14 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
15 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
16 whether the act is a felony or misdemeanor or not.

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

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21 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
22 violation of or conspiring to violate any provision or term of this chapter or of the applicable
23 federal and state laws and regulations governing pharmacy, including regulations established by
24 the board or by any other state or federal regulatory agency.

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1 8. Section 4022 of the Code states

2 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
3 humans or animals, and includes the following:

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

6 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale
7 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
8 in with the designation of the practitioner licensed to use or order use of the device.

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

11 9. Section 4060 of the Code states:

12 "No person shall possess any controlled substance, except that furnished to a person upon
13 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
14 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
15 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
16 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
17 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
18 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
19 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
20 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
21 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
22 labeled with the name and address of the supplier or producer.

23 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
24 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
25 devices."

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1 10. Section 4104 of the Code provides as follows:

2 (a) Every pharmacy shall have in place procedures for taking action to protect the public
3 when a licensed individual employed by or with the pharmacy is discovered or known to be
4 chemically, mentally, or physically impaired to the extent it affects his or her ability to practice
5 the profession or occupation authorized by his or her license, or is discovered or known to have
6 engaged in the theft, diversion, or self-use of dangerous drugs.

7 (b) Every pharmacy shall have written policies and procedures for addressing chemical,
8 mental, or physical impairment, as well as theft, diversion, or self-use of dangerous drugs, among
9 licensed individuals employed by or with the pharmacy.

10 (c) Every pharmacy shall report to the board, within 30 days of the receipt or development
11 of the following information with regard to any licensed individual employed by or with the
12 pharmacy:

13 (1) Any admission by a licensed individual of chemical, mental, or physical impairment
14 affecting his or her ability to practice.

15 (2) Any admission by a licensed individual of theft, diversion, or self-use of dangerous
16 drugs.

17 (3) Any video or documentary evidence demonstrating chemical, mental, or physical
18 impairment of a licensed individual to the extent it affects his or her ability to practice.

19 (4) Any video or documentary evidence demonstrating theft, diversion, or self-use of
20 dangerous drugs by a licensed individual.

21 (5) Any termination based on chemical, mental, or physical impairment of a licensed
22 individual to the extent it affects his or her ability to practice.

23 (6) Any termination of a licensed individual based on theft, diversion, or self-use of
24 dangerous drugs.

25 11. California Code of Regulations, title 16, section 1714, subdivision (b) provides:

26 “(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and
27 equipment so that drugs are safely and properly prepared, maintained, secured and distributed.”

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1 12. California Code of Regulations, title 16, section 1715.6, provides:

2 "The owner shall report to the Board within thirty (30) days of discovery of any loss of the
3 controlled substances, including their amounts and strengths."

4 COST RECOVERY

5 13. Section 125.3 of the Code states, in pertinent part, that the Board may request the
6 administrative law judge to direct a licentiate found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case.

9 Drugs

10 14. "Norco" is a compound consisting of 10 mg. of hydrocodone bitartrate, also known as
11 dihydrocodeinone, a Schedule III controlled substance as designated by Health & Safety Code
12 section 11056(e)(4), and 325 mg. acetaminophen per tablet.

13 15. "Vicodin" is a compound consisting of 5 mg. of hydrocodone bitartrate, also known
14 as dihydrocodeinone, a Schedule III controlled substance as designated by Health & Safety Code
15 section 11056(e)(4), and 500 mg. acetaminophen per tablet.

16 16. "Oxycodone" is a Schedule II controlled substance as designated by Health & Safety
17 Code section 11055(b)(1)(N).

18 FACTUAL BACKGROUND

19 17. In or around February or March 2008, Respondent Walgreens discovered that large
20 quantities of hydrocodone tablets, a controlled substance, were missing from the pharmacy. The
21 pharmacist-in-charge was told to conduct daily drug inventories. On or about March 5, 2008,
22 Walgreens loss prevention specialists conducted interviews of pharmacy employees regarding the
23 missing drugs. Two employees, Kao Hin Saechao and Isaac Campos, admitted to stealing
24 hydrocodone from the pharmacy and were subsequently terminated. Additionally, on or about
25 March 11, 2008, during an interview with Walgreens loss prevention specialists, another
26 pharmacy employee, Brittany Soares, admitted to diverting hydrocodone from the pharmacy and
27 was subsequently terminated. On or about March 12, 2008, a Walgreens Loss Prevention
28 Supervisor faxed the Board a one-page, hand-written notification that an unspecified controlled

1 substance loss had occurred at Respondent Walgreens and that the loss was attributed to
2 "customer theft". No further information was timely provided to the Board as required by
3 Respondent Walgreens or by Respondent Pham, despite Respondent Pham's responsibility for
4 such reports. Moreover, during a discussion of the drug losses and required reporting,
5 Respondent Pham told the pharmacist-in-charge to stay out of things and to say nothing.
6 Subsequently, Respondent Walgreens discovered that approximately 23,277 tablets of
7 hydrocodone-containing medications and approximately 2,767 tablets of oxycodone were missing
8 and unaccounted for from the pharmacy. Walgreens identified the responsible persons on or
9 about March 5, 2008 and also identified an additional responsible person on or about March 11,
10 2008. On or about June 19, 2008, Walgreens first reported to the Board that the loss was
11 attributable to former employees of Walgreens #6683, that two former employees were arrested
12 on or about March 5, 2008, and one former employee was arrested on or about March 11, 2008.

13 **Respondent Walgreens**

14 **FIRST CAUSE FOR DISCIPLINE**

15 (Inadequate Pharmacy Security)

16 18. Respondent Walgreens is subject to disciplinary action for unprofessional conduct
17 under section 4301, subdivision (o) in that Respondent violated California Code of Regulations,
18 title 16, section 1714, subdivision (b). Respondent failed to maintain appropriate security against
19 theft or diversion of controlled substances. The circumstances demonstrating Respondent's
20 inadequate security are that between approximately December 2007 and March 2008,
21 approximately 23,277 tablets of medications containing hydrocodone, a controlled substance, and
22 approximately 2760 tablets of the controlled substance Oxycodone were stolen, diverted, or
23 otherwise became missing from the pharmacy

24 **SECOND CAUSE FOR DISCIPLINE**

25 (Failure to Report Losses)

26 19. Respondent Walgreens is subject to disciplinary action for unprofessional conduct
27 under section 4301, subdivision (o) in that Respondent violated California Code of Regulations,
28 title 16, section 1715.6. The circumstances are that after becoming aware of the theft, diversion

1 and/or loss of the controlled substances hydrocodone and Oxycodone, as set forth above in
2 paragraph 18, Respondent failed to report those losses, including information regarding amounts
3 and strengths of the controlled substances, to the Board within 30 days of discovering the losses.

4 THIRD CAUSE FOR DISCIPLINE

5 (Failure to Report)

6 20. Respondent Walgreens is subject to disciplinary action for unprofessional conduct
7 under section 4301, subdivision (o) in that Respondent violated section 4104, subdivisions (c)(2),
8 (c)(4), and (c)(6). Despite having knowledge and information of the theft of controlled
9 substances through drug loss report evidence and loss prevention interviews with employees,
10 Respondent failed to report to the Board information regarding individuals employed by
11 Respondent Walgreens within 30 days of development or receipt of that information, including
12 information that pharmacy employees Kao Hin Saechao, Isaac Campos and Brittany Soares had
13 admitted to the theft of controlled substances (hydrocodone) from Respondent Walgreens and had
14 been terminated from employment based upon that theft.

15 Respondent Hanh Le Pham

16 FOURTH CAUSE FOR DISCIPLINE

17 (Failure to Report Losses)

18 21. Respondent Pham is subject to discipline for unprofessional conduct under
19 section 4301, subdivision (o), in that, while serving as District Manager for Respondent
20 Walgreens, Respondent Pham violated California Code of Regulations, title 16, section 1715.6.
21 The circumstances are that after becoming aware of the theft, diversion and/or loss of the
22 controlled substances hydrocodone and oxycodone, as set forth above in paragraph 18, and taking
23 responsibility for making the required reports, Respondent Pham failed to report those losses,
24 including information regarding amounts and strengths of the controlled substances, to the Board
25 within 30 days of discovering the losses.

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1 FIFTH CAUSE FOR DISCIPLINE

2 (Failure to Report)

3 22. Respondent Pham is subject to discipline for unprofessional conduct under
4 section 4301, subdivision (o), in that, while serving as District Manager for Respondent
5 Walgreens, Respondent Pham violated section 4104, subdivisions (c)(2), (c)(4), and (c)(6). The
6 circumstances are that after becoming aware of the theft, diversion and/or loss of the controlled
7 substances hydrocodone and Oxycodone, as set forth above in paragraph 18, Respondent Pham
8 was responsible for making the required reports, and instructed staff to stay out of things and say
9 nothing, but nevertheless, failed to report to the Board information regarding the theft of
10 controlled substances by individuals employed by Respondent Walgreens, within 30 days of
11 development or receipt of that information, including information that pharmacy employees Kao
12 Hin Saechao, Isaac Campos and Brittany Soares had admitted to the theft of controlled substances
13 (hydrocodone) from Respondent Walgreens, that these employees had been terminated from
14 employment based upon that theft, that they had been arrested by the Visalia Police, and were
15 being prosecuted by the Tulare County District Attorney's Office.

16 MATTERS IN AGGRIVATION

17 In assessing the amount of discipline to be imposed, Complainant requests that the court
18 take judicial notice of and consider the following:

19 23. On or about March 19, 2008, Citation No. CI 2007 34657 was issued by the Board to
20 Walgreens #6683 for violation of Business and Profession Code section 4005, 4301 (o), and 16
21 CCR section 1775, for allowing non-licensed staff perform the duties of a pharmacy technician on
22 or about October 31, 2007.

23 24. On or about Novmeber 9, 2009, Citation No. CI 2008 39692 was issued by the Board
24 to Walgreens #6683 for violation of Business and Profession Code section 4005, 4301 (o), and 16
25 CCR section 1775, for a prescription error that occurred on or about December 19, 2008.

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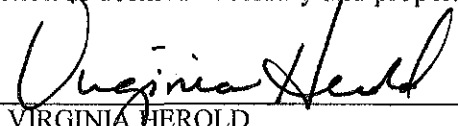
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PRAYER

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 46263, issued to Respondent Walgreens No. 06683
2. Revoking or suspending Pharmacist License Number RPH 55049, issued to Respondent Hanh Le Pham;
3. Ordering Respondent Walgreens and Respondent Hanh Le Pham 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: 9/12/12



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

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