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

11 In the Matter of the Accusation Against:

Case No. 5558

12 **TRINITY MISSION PHARMACY, INC.,**
13 **TRINA TRINH TRAN AND NGOC MINH**
HO, OWNERS
14 **16569 Brookhurst St.**
Fountain Valley, CA 92243

A C C U S A T I O N

15 **Pharmacy Permit No. PHY 50434**

16 **JOEL BERNARD SOBURN**
17 **27122 Ocean Vista Drive, A**
Laguna Beach, CA 92651

18 **Pharmacist License No. RPH 26296**

19
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 December 22, 2010, the Board of Pharmacy issued Pharmacy Permit
27 Number PHY 50434 to Trinity Mission Pharmacy, Inc. with Joel Bernard Soburn designated as
28 the Pharmacist-in-Charge from February 1, 2012 to July 12, 2014, Trina Trinh Tran as the

1 President and the owner of fifty percent of the outstanding shares and Ngoc Minh Ho as the Vice
2 President and owner of fifty percent of the outstanding shares (Respondent Trinity Mission
3 Pharmacy.) The Pharmacy Permit was in full force and effect at all times relevant to the charges
4 brought herein and will expire on December 1, 2015, unless renewed.

5 3. On or about August 5, 1969, the Board of Pharmacy issued Pharmacist License
6 Number RPH 26296 to Joel Bernard Soburn (Respondent Joel Soburn). The Pharmacist License
7 was in full force and effect at all times relevant to the charges brought herein and will expire on
8 July 31, 2017, unless renewed.

9 JURISDICTION

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

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

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

18 7. Section 4300.1 of the Code states:

19 The expiration, cancellation, forfeiture, or suspension of a board-issued license
20 by operation of law or by order or decision of the board or a court of law, the
21 placement of a license on a retired status, or the voluntary surrender of a license by a
22 licensee shall not deprive the board of jurisdiction to commence or proceed with any
23 investigation of, or action or disciplinary proceeding against, the licensee or to render
24 a decision suspending or revoking the license.

25 STATUTORY AND REGULATORY PROVISIONS

26 8. Section 4081 of the Code states in pertinent part:

27 (a) All records of manufacture and of sale, acquisition, or disposition of dangerous
28 drugs or dangerous devices shall be at all times during business hours open to
inspection by authorized officers of the law, and shall be preserved for at least
three years from the date of making. A current inventory shall be kept by every
manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer,
physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution,
or establishment holding a currently valid and unrevoked certificate, license,

1 permit, registration, or exemption under Division 2 (commencing with Section
2 1200) of the Health and Safety Code or under Part 4 (commencing with Section
3 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock
4 of dangerous drugs or dangerous devices.

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

9 9. Section 4105(a) of the Code states:

10 All records or other documentation of the acquisition and disposition of
11 dangerous drugs and dangerous devices by any entity licensed by the board shall be
12 retained on the licensed premises in a readily retrievable form.

13 10. Section 4113(c) of the Code states:

14 The pharmacist-in-charge shall be responsible for a pharmacy's compliance
15 with all state and federal laws and regulations pertaining to the practice of pharmacy.

16 11. Section 4301 of the Code states in pertinent part:

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

21 ...

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

24 ...

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

...

12. Section 4307(a) of the Code states that:

Any person who has been denied a license or whose license has been revoked
or is under suspension, or who has failed to renew his or her license while it was
under suspension, or who has been a manager, administrator, owner member, officer,
director, associate, or partner of any partnership, corporation, firm, or association
whose application for a license has been denied or revoked, is under suspension or
has been placed on probation, and while acting as the manger, administrator, owner,
member, officer, director, associate, or partner had knowledge or knowingly
participated in any conduct for which the license was denied, revoked, suspended, or
placed on probation, shall be prohibited from serving as a manger, administrator,

owner, member, officer, director, associate, or partner of a licensee as follows:

(1) Where a probationary license is issued or where an existing license is placed on probation, this prohibition shall remain in effect for a period not to exceed five years.

(2) Where the license is denied or revoked, the prohibition shall continue until the license is issued or reinstated.

....

13. Sections 1714(b) and (d) of title 16, California Code of Regulations state:

(b) 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. The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice of pharmacy.

...

(d) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

14. Section 1715(a) of title 16, California Code of Regulations states:

The pharmacist-in-charge of each pharmacy as defined under section 4029 or section 4037 of the Business and Professions Code shall complete a self-assessment of the pharmacy's compliance with federal and state pharmacy law. The assessment shall be performed before July 1 of every odd-numbered year. The primary purpose of the self-assessment is to promote compliance through self-examination and education.

15. Section 1715.6 of title 16, California Code of Regulations states:

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

16. Section 1718 of title 16, California Code of Regulations states:

"Current Inventory" as used in Section 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Section 4081 and 4332.

The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least three years.

17. Section 11165(d) of the Health & Safety Code states in part:

For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, as defined in the controlled substances schedules in federal law and regulations, specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code of Federal Regulations, the dispensing pharmacy, clinic, or other dispenser shall report the following information to the Department of Justice as soon

1 as reasonably possible, but not more than seven days after the date a controlled
2 substance is dispensed, in a format specified by the Department of Justice:

3 (1) Full name, address, and, if available, telephone number of the ultimate
4 user or research subject, or contact information as determined by the Secretary of the
5 United States Department of Health and Human Services, and the gender, and date of
6 birth of the ultimate user.

7 (2) The prescriber's category of licensure, license number, national provider
8 identifier (NPI) number, if applicable, the federal controlled substance registration
9 number, and the state medical license number of any prescriber using the federal
10 controlled substance registration number of a government-exempt facility.

11 (3) Pharmacy prescription number, license number, NPI number, and
12 federal controlled substance registration number.

13 (4) National Drug Code (NDC) number of the controlled substance
14 dispensed.

15 (5) Quantity of the controlled substance dispensed.

16 (6) International Statistical Classification of Diseases, 9th revision (ICD-9)
17 or 10th revision (ICD-10) Code, if available.

18 (7) Number of refills ordered.

19 (8) Whether the drug was dispensed as a refill of a prescription or as a first-
20 time request.

21 (9) Date of origin of the prescription.

22 (10) Date of dispensing of the prescription.

23 **COST RECOVERY**

24 18. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
25 administrative law judge to direct a licentiate found to have committed a violation or violations of
26 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
27 enforcement of the case.

28 **DRUGS**

19 19. Adipex P is the brand name for phentermine, a Schedule IV controlled substance
20 pursuant to Health and Safety Code section 11057(f) and a dangerous drug pursuant to Business
21 and Professions Code section 4022.

1 27. In August 2014, Respondent Trinity Mission Pharmacy failed to have its new
2 pharmacist-in-charge complete a self assessment within 30 days of the change in the pharmacist-
3 in-charge. Respondent Trinity Mission Pharmacy also failed to submit prescription data to the
4 Controlled Substance Utilization Review and Evaluation System (CURES) on a weekly basis
5 from July 30, 2014 through December 18, 2014.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Failure to Maintain Current Inventory of Controlled Substances against Respondents**
8 **Trinity Mission Pharmacy and Joel Soburn)**

9 28. Respondents Trinity Mission Pharmacy and Joel Soburn are subject to disciplinary
10 action under Code section 4301(o), for violating title 16, California Code of Regulations, section
11 1718, in that they did not maintain a current inventory of controlled substances, Norco 10/325,
12 zolpidem 10mg, alprazolam 2 mg and phentermine 37.5 mg and suffered losses in their inventory
13 of those controlled substances, as set forth in paragraphs 24 through 27 above, which are
14 incorporated herein by reference.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Failure to Provide Adequate Security for Controlled Substances**
17 **against Respondent Trinity Mission Pharmacy and Joel Soburn)**

18 29. Respondents Trinity Mission Pharmacy and Joel Soburn are subject to disciplinary
19 action under Code section 4301(o), for violating title 16, California Code of Regulations, sections
20 1714(b) and 1714(d), in that they did not provide adequate security for zolpidem 10mg,
21 phentermine 37.5 mg, Norco 10/325 mg and alprazolam 2 mg, as set forth in paragraphs 24
22 through 27 above, which are incorporated herein by reference.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Failure to Maintain Records of Acquisition and Disposition against Respondents Trinity**
25 **Mission Pharmacy and Joel Soburn)**

26 30. Respondents Trinity Mission Pharmacy and Joel Soburn are subject to disciplinary
27 action under Code section 4301(o), for violating Code sections 4081(a) and 4105(a), in that they
28 failed to maintain all the records of acquisition and disposition for the controlled substances,

1 alprazolam 2mg, zolpidem 10 mg, phentermine 37.5 mg and Norco 10/325 mg, as set forth in
2 paragraphs 24 through 27, which are incorporated herein by reference.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Failure to Complete Self-Assessment against Respondent Trinity Mission Pharmacy)**

5 31. Respondent Trinity Mission Pharmacy is subject to disciplinary action under Code
6 section 4301(o), for violating California Code of Regulations, title 16, 1715(a), in that it failed to
7 complete a self-assessment upon the change of the pharmacist-in-charge in or about August 2014,
8 as set forth in paragraphs 24 through 27, which are incorporated herein by reference.

9 **FIFTH CAUSE FOR DISCIPLINE**

10 **(Failure to Report Prescription Information to CURES against Respondent Trinity Mission
11 Pharmacy)**

12 32. Respondent Trinity Mission Pharmacy is subject to disciplinary action under Code
13 section 4301(j), for violating Health & Safety Code section 11165(d), in that it failed to report
14 prescription information to CURES, as set forth in paragraphs 24 through 27, which are
15 incorporated herein by reference.

16 **SIXTH CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct against Respondents)**

18 33. Respondents are subject to disciplinary action under Code section 4301 for
19 unprofessional conduct in that they engaged in the activities described in paragraphs 24 through
20 27 above, which are incorporated herein by reference.

21 **OTHER MATTERS**

22 34. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
23 PHY 50434 issued to Trinity Mission Pharmacy, Inc., Trinity Mission Pharmacy, Inc. shall be
24 prohibited from serving as a manager, administrator, owner, member, officer, director, associate,
25 or partner of a licensee for five years if Pharmacy Permit Number PHY 50434 is placed on
26 probation or until Pharmacy Permit Number PHY 50434 is reinstated if it is revoked.

27 35. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit
28 Number PHY 50434 issued to Trinity Mission Pharmacy, Inc. while Trina Trinh Tran and/or

1 Ngoc Minh Ho have been an officer and owner and had knowledge of or knowingly participated
2 in any conduct for which the licensee was disciplined, Trina Trinh Tran and Ngoc Minh Ho shall
3 be prohibited from serving as a manager, administrator, owner, member, officer, director,
4 associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 50434 is
5 placed on probation or until Pharmacy Permit Number PHY 50434 is reinstated if it is revoked.

6 **DISCIPLINARY CONSIDERATIONS**

7 36. To determine the degree of discipline, if any, to be imposed on Respondents,
8 Complainant alleges that on or about November 11, 1993, Joel Soburn's pharmacist license was
9 revoked, the revocation stayed and his license placed on probation for unprofessional conduct
10 including the failure to keep records of the acquisition and disposition of dangerous drugs, the
11 holding of misbranded drugs and the commission of acts which constitutes adulterated drugs.

12 **PRAYER**

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

15 1. Revoking or suspending Pharmacist License Number PHY 50434, issued to Trinity
16 Mission Pharmacy, Inc.;

17 2. Revoking or suspending Pharmacist License Number RPH 26296, issued to Joel
18 Bernard Soburn;

19 3. Prohibiting Trinity Mission Pharmacy, Inc. from serving as a manager, administrator,
20 owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy
21 Permit Number PHY 50434 is placed on probation or until Pharmacy Permit Number PHY
22 50434 is reinstated if Pharmacy Permit Number 50434 issued to Trinity Mission Pharmacy, Inc.
23 is revoked;

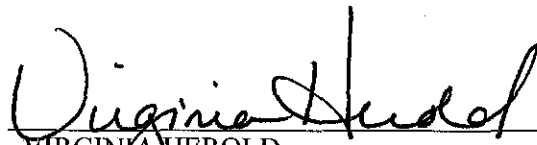
24 4. Prohibiting Trina Trinh Tran from serving as a manager, administrator, owner,
25 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
26 Number PHY 50434 is placed on probation or until Pharmacy Permit Number PHY 50434 is
27 reinstated if Pharmacy Permit Number 50434 issued to Trinity Mission Pharmacy, Inc. is
28 revoked;

1 5. Prohibiting Ngoc Minh Ho from serving as a manager, administrator, owner, member,
2 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number
3 PHY 50434 is placed on probation or until Pharmacy Permit Number PHY 50434 is reinstated if
4 Pharmacy Permit Number PHY 50434 issued to Trinity Mission Pharmacy, Inc. is revoked;

5 6. Ordering Trinity Mission Pharmacy, Inc. and Joel Bernard Soburn to pay the Board
6 of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
7 Business and Professions Code section 125.3;

8 7. Taking such other and further action as deemed necessary and proper.

9
10
11 DATED: 3/2/16



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

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