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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. 5996

12 **PHAN HEALTHCARE, INC., DBA**  
13 **FOOTHILL RANCH MEDICAL PLAZA**  
14 **PHARMACY**  
26750 Towne Center Drive, Suite C  
Foothill Ranch, CA 92610

**ACCUSATION**

15 Pharmacy Permit No. PHY 47237

16 **TONY PHAN**  
17 26750 Towne Center Drive, Suite C  
18 Foothill Ranch, CA 92610

19 Pharmacist License No. RPH 46350

20 Respondents.

21  
22 Complainant alleges:

23 **PARTIES**

- 24 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official  
25 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
26 2. On or about July 12, 2005, the Board of Pharmacy issued Pharmacy Permit Number  
27 PHY 47237 to Phan Healthcare, Inc., doing business as Foothill Ranch Medical Plaza Pharmacy  
28 (Respondent Foothill Ranch Medical Plaza Pharmacy). The Pharmacy Permit was in full force

1 and effect at all times relevant to the charges brought herein and will expire on July 1, 2017,  
2 unless renewed.

3 3. On or about August 11, 1993, the Board of Pharmacy issued Pharmacist License  
4 Number RPH 46350 to Tony Phan (Respondent Tony Phan). The Pharmacist License was in full  
5 force and effect at all times relevant to the charges brought herein and will expire on July 31,  
6 2017, unless renewed.

### 7 JURISDICTION

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

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

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

16 7. Section 4300.1 of the Code states:

17 The expiration, cancellation, forfeiture, or suspension of a board-issued license  
18 by operation of law or by order or decision of the board or a court of law, the  
19 placement of a license on a retired status, or the voluntary surrender of a license by a  
20 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.

### 21 STATUTORY AND REGULATORY PROVISIONS

22 8. Section 4113(c) of the Code states:

23 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.

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

25 The board shall take action against any holder of a license who is guilty of  
26 unprofessional conduct or whose license has been issued by mistake. Unprofessional  
conduct shall include, but is not limited to, any of the following:

27 ...

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

3 ...

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

9 ...

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

11 Any person who has been denied a license or whose license has been revoked  
12 or is under suspension, or who has failed to renew his or her license while it was  
13 under suspension, or who has been a manager, administrator, owner member, officer,  
14 director, associate, partner, or any other person with management or control of any  
15 partnership, corporation, firm, or association whose application for a license has been  
16 denied or revoked, is under suspension or has been placed on probation, and while  
17 acting as the manger, administrator, owner, member, officer, director, associate,  
18 partner, or any other person with management or control had knowledge or  
19 knowingly participated in any conduct for which the license was denied, revoked,  
20 suspended, or placed on probation, shall be prohibited from serving as a manger,  
21 administrator, owner, member, officer, director, associate, partner, or any other  
22 person with management or control of a licensee as follows:

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

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

28 11. Health and Safety Code section 11153(a) states:

A prescription for a controlled substance shall only be issued for a legitimate  
medical purpose by an individual practitioner acting in the usual course of his or her  
professional practice. The responsibility for the proper prescribing and dispensing of  
controlled substances is upon the prescribing practitioner, but a corresponding  
responsibility rests with the pharmacist who fills the prescription. Except as  
authorized by this division, the following are not legal prescriptions: (1) an order  
purporting to be a prescription which is issued not in the usual course of professional  
treatment or in legitimate and authorized research; or (2) an order for an addict or  
habitual user of controlled substances, which is issued not in the course of  
professional treatment or as part of an authorized narcotic treatment program, for the  
purpose of providing the user with controlled substances, sufficient to keep him or  
her comfortable by maintaining customary use.

12. Health and Safety Code section 11162.1(a) states:

(a) The prescription forms for controlled substances shall be printed with the  
following features:

(1) A latent, repetitive 'void' pattern shall be printed across the entire front of the prescription blank; if a prescription is scanned or photocopied, the word "void" shall appear in a pattern across the entire front of the prescription.

(2) A watermark shall be printed on the backside of the prescription blank; the watermark shall consist of the words "California Security Prescription."

(3) A chemical void protection that prevents alteration by chemical washing.

(4) A feature printed in thermochromic ink.

(5) An area of opaque writing so that the writing disappears if the prescription is lightened.

(6) A description of the security features included on each prescription form.

(7) (A) Six quantity check off boxes shall be printed on the form so that the prescriber may indicate the quantity by checking the applicable box where the

following quantities shall appear:

1-24

25-49

50-74

75-100

101-150

151 and over.

(B) In conjunction with the quantity boxes, a space shall be provided to designate the units referenced in the quantity boxes when the drug is not in tablet or capsule form.

(8) Prescription blanks shall contain a statement printed on the bottom of the prescription blank that the "Prescription is void if the number of drugs prescribed is not noted."

(9) The preprinted name, category of licensure, license number, federal controlled substance registration number, and address of the prescribing practitioner.

(10) Check boxes shall be printed on the form so that the prescriber may indicate the number of refills ordered.

(11) The date of origin of the prescription.

(12) A check box indicating the prescriber's order not to substitute.

(13) An identifying number assigned to the approved security printer by the Department of Justice.

1 (14) (A) A check box by the name of each prescriber when a prescription form  
2 lists multiple prescribers.

3 (B) Each prescriber who signs the prescription form shall identify himself or  
4 herself as the prescriber by checking the box by his or her name.

5 13. Section 1761 of title 16, California Code of Regulations states:

6 (a) No pharmacist shall compound or dispense any prescription which contains  
7 any significant error, omission, irregularity, uncertainty, ambiguity or alteration.  
8 Upon receipt of any such prescription, the pharmacist shall contact the prescriber to  
9 obtain the information needed to validate the prescription.

10 (b) Even after conferring with the prescriber, a pharmacist shall not compound  
11 or dispense a controlled substance prescription where the pharmacist knows or has  
12 objective reason to know that said prescription was not issued for a legitimate  
13 medical purpose.

14 14. Section 1306.04(a) of title 21, Code of Federal Regulations states:

15 A prescription for a controlled substance to be effective must be issued for a  
16 legitimate medical purpose by an individual practitioner acting in the usual course of  
17 his professional practice. The responsibility for the proper prescribing and dispensing  
18 of controlled substances is upon the prescribing practitioner, but a corresponding  
19 responsibility rests with the pharmacist who fills the prescription. An order  
20 purporting to be a prescription issued not in the usual course of professional treatment  
21 or in legitimate and authorized research is not a prescription within the meaning and  
22 intent of section 309 of the Act (21 U.S.C. 829) and the person knowingly filling such  
23 a purported prescription, as well as the person issuing it, shall be subject to the  
24 penalties provided for violations of the provisions of law relating to controlled  
25 substances.

## 26 COST RECOVERY

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

## 29 DRUGS

30 16. Duragesic is a brand name for fentanyl, a Schedule II controlled substance pursuant to  
31 Health and Safety Code section 11055(c)(8) and a dangerous drug pursuant to Business and  
32 Professions Code section 4022.

33 17. Roxicodone is a brand name for oxycodone, a Schedule II controlled substance  
34 pursuant to Health and Safety Code section 11055(b)(1)(M) and a dangerous drug pursuant to  
35 Business and Professions Code section 4022.

18. Soma is a brand name for carisdoprodol, a Schedule IV controlled substance pursuant to title 21, Code of Federal Regulations, section 1308.14(c)(6) and is a dangerous drug pursuant to Business and Professions Code section 4022.

## FACTUAL ALLEGATIONS

19. From July 12, 2005 through the present, Respondent Tony Phan was the Pharmacist-in-Charge of Respondent Foothill Ranch Medical Plaza Pharmacy.

20. From June 13, 2013 to April 13, 2015, Respondents filled 339 controlled substance prescriptions issued on their face, by Dr. A.B, a family medicine practitioner. However, these prescriptions were forged and never written, nor authorized by Dr. A.B.

21. Individuals paid for the controlled substance prescriptions in cash and did not seek reimbursement from an insurance company or government agency.

22. Respondents dispensed fentanyl transdermal patches with directions to use them in frequencies greater than indicated by the manufacturer. This resulted in unusually high doses or high quantities of fentanyl dispensed to individuals by Respondents.

23. Respondents dispensed identical controlled substances, in the same strength and doses to individuals with the same last name and address.

24. Respondents filled prescriptions for controlled substances which were written in an identical fashion for multiple individuals. Namely, the prescriptions were written for the same combination of controlled substances in the same strength (the highest available) and doses to different individuals which were dispensed by Respondents, sometimes on the same day or every other day.

25. Individuals were prescribed the same drug therapy for multiple conditions or diagnoses which typically require separate drug therapies and specialists.

26. Respondents did not adequately verify or otherwise research whether the prescriptions described in paragraph 19 were written for a legitimate medical purpose before filling them.

27. On May 26, 2015, September 30, 2015, and March 30, 2016, Respondents filled three prescriptions (Numbers 2214238, 2214814 and 2215707) which were written on forms lacking an

1 identifying number of the security printer, a lot number and the phrase, "California Security  
2 Prescription" on the back of the forms. Additionally, Prescription Number 2214238 lacked a  
3 latent, repetitive "void" pattern printed across the front of the prescription and contained the  
4 phrase "Rx Invalid."

### 5 **FIRST CAUSE FOR DISCIPLINE**

#### 6 **(Failing to Comply with Corresponding Responsibility** 7 **for Legitimate Controlled Substance Prescriptions)**

8 28. Respondents are subject to disciplinary action under Code sections 4301(j) and (o),  
9 for violating Health and Safety Code section 11153(a) and section 1306.04(a) of title 21 of the  
10 Code of Federal Regulations, in that they failed to comply with their corresponding responsibility  
11 to ensure that controlled substances were dispensed for a legitimate medical purpose when  
12 Respondents furnished prescriptions for controlled substances even though "red flags" were  
13 present to indicate those prescriptions were not issued for a legitimate medical purpose, as set  
14 forth in paragraphs 18 through 27 above, which are incorporated herein by reference.

### 15 **SECOND CAUSE FOR DISCIPLINE**

#### 16 **(Dispensing Controlled Substance Prescriptions with Significant Errors, Omissions,** 17 **Irregularities, Uncertainties, Ambiguities or Alterations)**

18 29. Respondents are subject to disciplinary action under Code section 4301(o), for  
19 violating title 16, California Code of Regulations, sections 1761(a) and (b), in that they dispensed  
20 prescriptions for controlled substances, which contained significant errors, omissions,  
21 irregularities, uncertainties, ambiguities or alterations, as set forth in paragraphs 18 through 27  
22 above, which are incorporated herein by reference.

### 23 **THIRD CAUSE FOR DISCIPLINE**

#### 24 **(Dispensing Controlled Substance Prescriptions Written on Unauthorized Forms)**

25 30. Respondents are subject to disciplinary action under Code section 4301(j), for  
26 violating Health and Safety Code section 11162.1(a), in that they dispensed prescriptions written  
27 on unauthorized forms, as set forth in paragraph 27 above, which are incorporated herein by  
28 reference.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 31. Respondents are subject to disciplinary action under Code section 4301 for  
4 unprofessional conduct in that they engaged in the activities described in paragraphs 18 through  
5 27 above, which are incorporated herein by reference.

6 **OTHER MATTERS**

7 32. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number  
8 PHY 47237 issued to Phan Healthcare, Inc., doing business as Foothill Ranch Medical Plaza  
9 Pharmacy, Phan Healthcare, Inc., doing business as Foothill Ranch Medical Plaza Pharmacy  
10 shall be prohibited from serving as a manager, administrator, owner, member, officer, director,  
11 associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 47237 is  
12 placed on probation or until Pharmacy Permit Number PHY 47237 is reinstated if it is revoked.

13 33. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number  
14 PHY 47237 issued to Phan Healthcare, Inc., doing business as Foothill Ranch Medical Plaza  
15 Pharmacy while Tony Phan has been an officer and owner and had knowledge of or knowingly  
16 participated in any conduct for which the licensee was disciplined, Tony Phan shall be prohibited  
17 from serving as a manager, administrator, owner, member, officer, director, associate, or partner  
18 of a licensee for five years if Pharmacy Permit Number PHY 47237 is placed on probation or  
19 until Pharmacy Permit Number PHY 447237 is reinstated if it is revoked.

20 34. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License  
21 Number RPH 46350 issued to Tony Phan, Tony Phan shall be prohibited from serving as a  
22 manager, administrator, owner, member, officer, director, associate, or partner of a licensee for  
23 five years if Pharmacist License Number RPH 46350 is placed on probation or until Pharmacist  
24 License Number RPH 46350 is reinstated if it is revoked.

25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
27 and that following the hearing, the Board of Pharmacy issue a decision:  
28



1       1.     Revoking or suspending Pharmacy Permit Number PHY 47237, issued to Phan  
2     Healthcare, Inc., doing business as Foothill Ranch Medical Plaza Pharmacy;

3       2.     Revoking or suspending Pharmacist License Number RPH 46350, issued to Tony  
4     Phan;

5       3.     Prohibiting Phan Healthcare, Inc., doing business as Foothill Ranch Medical Plaza  
6     Pharmacy from serving as a manager, administrator, owner, member, officer, director, associate,  
7     or partner of a licensee for five years if Pharmacy Permit Number PHY 47237 is placed on  
8     probation or until Pharmacy Permit Number PHY 47237 is reinstated if Pharmacy Permit  
9     Number PHY 47237 issued to Phan Healthcare, Inc., doing business as Foothill Ranch Medical  
10    Plaza Pharmacy is revoked;

11      4.     Prohibiting Tony Phan from serving as a manager, administrator, owner, member,  
12    officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number  
13    PHY 47237 is placed on probation or until Pharmacy Permit Number PHY 47237 is reinstated if  
14    Pharmacy Permit Number PHY 47237 issued to Phan Healthcare, Inc., doing business as  
15    Foothill Ranch Medical Plaza Pharmacy is revoked;

16      5.     Prohibiting Tony Phan from serving as a manager, administrator, owner, member,  
17    officer, director, associate, or partner of a licensee for five years if Pharmacist License Number  
18    RPH 46350 is placed on probation or until Pharmacist License Number RPH 46350 is reinstated  
19    if Pharmacist License Number RPH 46350 issued to Tony Phan is revoked;

20      6.     Ordering Phan Healthcare, Inc., doing business as Foothill Ranch Medical Plaza  
21    Pharmacy and Tony Phan to pay the Board of Pharmacy the reasonable costs of the investigation  
22    and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

23    //

24    //

25    //

26    //

27    //

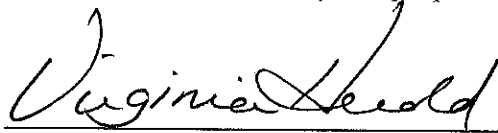
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7. Taking such other and further action as deemed necessary and proper.

DATED: \_\_\_\_\_

3/1/17



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

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