BILL LOCKYER, Attorney General
of the State of California
JAMI L. CANTORE, State Bar No. 165410
Deputy Attorney General
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2569
Facsimile: (213) 897-2804

Attorneys for Complainant

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

In the Matter of the Accusation Against: HANH PHARMACY 931 S. Atlantic Blvd. Monterey Park, CA 91754 Original Pharmacy Permit No. PHY41142 and HANRY H. HUYNH 1237 N. Kenneydale Ave. S. San Gabriel, CA 91770 Pharmacist License No. RPH 40626 Respondents.	Case No. 2660 OAH No. L-2004020270 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of Pharmacy. She brought this action solely in her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Jami L. Cantore, Deputy Attorney General.

2. Respondents Hanry H. Huynh and Hanh Pharmacy are represented in this proceeding by attorney Donald B. Brown, whose address is LAW OFFICES OF DONALD B.

BROWN, 3848 Carson St., Ste. 206, Torrance, CA 90503.

3. On or about October 19, 1986, the Board of Pharmacy issued Pharmacist License No. RPH 40626 to Hanry H. Huynh (Respondent Huynh). The License was in full force and effect at all times relevant to the charges brought in Accusation No. 2660 and will expire on January 31, 2004, unless renewed.

4. On or about October 17, 1995, the Board of Pharmacy issued Original Pharmacy Permit No. PHY41142 to Hanry Hugh Huynh to do business as Hanh Pharmacy (Respondent Hanh). Hanry Hugh Huynh, RPH 40626, has been the Pharmacist-in-Charge since October 17, 1995. The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein. Original Pharmacy Permit No. PHY41142 expired on October 1, 2003, and has been canceled.

JURISDICTION

5. Accusation No. 2660 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondents. The Accusation and all other statutorily required documents were properly served on Respondents on January 23, 2004. Respondents timely filed their Notice of Defense contesting the Accusation. A copy of Accusation No. 2660 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondents have carefully read, fully discussed with counsel, and understand the charges and allegations in Accusation No. 2660. Respondents have also carefully read, fully discussed with counsel, and understand the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondents are fully aware of their legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at their own expense; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on their own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the

California Administrative Procedure Act and other applicable laws.

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

CULPABILITY

9. Respondents admit the truth of each and every charge and allegation in Accusation No. 2660.

10. Respondents agree that Pharmacist License No. RPH 40626 and Original Pharmacy Permit No. PHY 41142 are subject to discipline and agree to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CIRCUMSTANCES IN MITIGATION

11. Respondent Hanry H. Huynh and Respondent Hanh Pharmacy have never been the subject of any disciplinary action. Respondents are admitting responsibility at an early stage in the proceedings.

RESERVATION

12. The admissions made by Respondents herein are only for the purpose of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

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

considered this matter.

14. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Original Pharmacy Permit No. PHY 41142 issued to Hanry Hugh Huynh, doing business as Hanh Pharmacy, is revoked. IT IS FURTHER ORDERED that Pharmacist License No. RPH 40626 issued to Respondent Hanry H. Huynh is revoked. However, the revocation as to Pharmacist License No. RPH 40626 is stayed, and Respondent Huynh is placed on probation for three (3) years on the following terms and conditions.

1. **Obey All Laws.** Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

Respondent shall report any of the following occurrences to the Board, in writing, within 72 hours of such occurrence:

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

2. **Reporting to the Board.** Respondent shall report to the Board quarterly. The report shall be made either in person or in writing, as directed. Respondent shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report **is not** made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the Board.

3. **Interview with the Board.** Upon receipt of reasonable notice, Respondent shall appear in person for interviews with the Board upon request at various intervals at a location to be determined by the Board. Failure to appear for a scheduled interview without prior notification to Board staff shall be considered a violation of probation.

4. **Cooperation with Board Staff.** Respondent shall cooperate with the Board's inspectional program and in the Board's monitoring and investigation of Respondent's compliance with the terms and conditions of his probation. Failure to comply shall be considered a violation of probation.

5. **Continuing Education.** Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.

6. **Notice to Employers.** Respondent shall notify all present and prospective employers of the decision in case number 2660 and the terms, conditions and restrictions imposed on Respondent by the decision. Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking new employment, Respondent shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in writing acknowledging the employer has read the decision in case number 2660.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at every pharmacy of the and terms conditions of the decision in case number 2660 in advance of the Respondent commencing work at each pharmacy.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist, whether the

Respondent is considered an employee or independent contractor.

7. **No Preceptorships, Supervision of Interns, Being Pharmacist-in-Charge (PIC), or Serving as a Consultant.** Respondent shall not supervise any intern pharmacist or perform any of the duties of a preceptor, nor shall Respondent be the pharmacist-in-charge of any entity licensed by the Board unless otherwise specified in this order.

8. **Reimbursement of Board Costs.** Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $ 11,500.00. Respondent shall make said payments in equal quarterly installments.

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

9. **Probation Monitoring Costs.** Respondent shall pay the costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation.

10. **Status of License**. Respondent shall, at all times while on probation, maintain an active current license with the Board, including any period during which suspension or probation is tolled.

If Respondent's license expires or is canceled by operation of law or otherwise, upon renewal or reapplication, Respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

11. **License Surrender while on Probation/Suspension.** Following the effective date of this decision, should Respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender his license to the Board for surrender. The Board shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, Respondent shall relinquish his pocket license to the Board within 10 days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license from the Board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

12. **Notification of Employment/Mailing Address Change.** Respondent shall notify the Board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving and/or the address of the new employer, supervisor or owner and work schedule if known. Respondent shall notify the Board in writing within 10 days of a change in name, mailing address or phone number.

13. **Tolling of Probation.** Should Respondent, regardless of residency, for any reason cease practicing pharmacy for a minimum of forty (40) hours per calendar month in California, Respondent must notify the Board in writing within 10 days of cessation of the practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three years.

"Cessation of practice" means any period of time exceeding 30 days in which Respondent is not engaged in the practice of pharmacy as defined in Section 4052 of the Business and Professions Code.

14. **Violation of Probation.** If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended, until the petition to revoke probation or accusation is heard and decided.

If Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent, and probation shall automatically

be extended until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty which was stayed.

15. **Completion of Probation.** Upon successful completion of probation, Respondent's license will be fully restored.

16. **No Ownership of Premises.** Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the Board within 90 days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the Board.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Donald B. Brown. I understand the stipulation and the effect it will have on Pharmacist License No. RPH 40626 and on Original Pharmacy Permit No. PHY 41142. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: OCT 5 2004.

HANRY H. HUYNH, HANRY HUGH HUYNH, doing business as HANH PHARMACY,
Respondents

I have read and fully discussed with Respondents Hanry H. Huynh, and Hanry H. Huynh, doing business as Hanh Pharmacy, the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: SEP 10 2004.

DONALD B. BROWN
Attorney for Respondent

ENDORSEMENT

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

DATED: 10/7/04.

BILL LOCKYER, Attorney General
of the State of California

JAMI L. CANTORE
Deputy Attorney General

Attorneys for Complainant

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

In the Matter of the Accusation Against: HANH PHARMACY 931 S. Atlantic Blvd. Monterey Park, CA 91754 Original Pharmacy Permit No. PHY41142 and HANRY H. HUYNH 1237 N. Kenneydale Ave. S. San Gabriel, CA 91770 Pharmacist License No. RPH 40626 Respondents.	Case No. 2660 OAH No. L-2004020270

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 on January 5, 2005.

It is so ORDERED December 6, 2004.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President

Exhibit A

Accusation No. 2660

EXHIBIT A

BILL LOCKYER, Attorney General
of the State of California
JAMI L. CANTORE, State Bar No. 165410
Deputy Attorney General
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2569
Facsimile: (213) 897-2804

Attorneys for Complainant

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

In the Matter of the Accusation Against: HANH PHARMACY 931 S. Atlantic Blvd. Monterey Park, CA 91754 Original Pharmacy Permit No. PHY41142 and HANRY H. HUYNH 1237 N. Kenneydale Ave. S. San Gabriel, CA 91770 Pharmacist License No. RPH 40626 Respondents.	Case No. 2660 **ACCUSATION**

Complainant alleges:

PARTIES

1. Patricia F. Harris (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about October 17, 1995, the Board of Pharmacy issued Original Pharmacy Permit No. PHY41142 to Hanry Hugh Huynh to do business as Hanh Pharmacy (Respondent Hanh). Hanry Hugh Huynh, RPH 40626, has been the Pharmacist-in-Charge since October 17, 1995. The Pharmacy Permit was in full force and effect at all times relevant to the

charges brought herein. Original Pharmacy Permit No. PHY41142 expired on October 1, 2003, and has been cancelled.

3. On or about October 19, 1986, the Board of Pharmacy issued Pharmacist License No. RPH 40626 to Hanry H. Huynh (Respondent Huynh). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2004, unless renewed.

JURISDICTION

4. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws.

5. Business and Professions Code section 4300 states:

"(a) Every license issued may be suspended or revoked.

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

"(3) Suspending his or her right to practice for a period not exceeding one year.

"(4) Revoking his or her license.

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

"(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

"(1) Medical or psychiatric evaluation.

"(2) Continuing medical or psychiatric treatment.

"(3) Restriction of type or circumstances of practice.

"(4) Continuing participation in a board-approved rehabilitation program.

"(5) Abstention from the use of alcohol or drugs.

"(6) Random fluid testing for alcohol or drugs.

"(7) Compliance with laws and regulations governing the practice of pharmacy.

"(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

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

6. Business and Professions Code section 4301 states, in pertinent part:

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

. . . .

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

. . . .

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

. . . .

"(q) Engaging in any conduct that subverts or attempts to subvert an investigation

of the board ."

7. Business and Professions Code section 4081, subdivision (a), states:

"All records of manufacture and of sale, acquisition, or disposition of dangerous 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, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices."

8. Business and Professions Code section 4113, subdivision (b), states: "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."

9. Business and Professions Code section 4332 states:

"Any person who fails, neglects, or refuses to maintain the records required by Section 4081 or who, when called upon by an authorized officer or a member of the board, fails, neglects, or refuses to produce or provide the records within a reasonable time, or who willfully produces or furnishes records that are false, is guilty of a misdemeanor."

10. California Code of Regulations, title 16, section 1718, states:

"Current Inventory' as used in Sections 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 Sections 4081 and 4332.

"The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory."

11. Business and Professions Code section 118, subdivision (b), states:

" The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or

by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

12. Business and Professions Code section 125.3, subdivision (a), states, in pertinent part:

"Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the board may request the administrative law judge to direct a licentiate 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."

FIRST CAUSE FOR DISCIPLINE

(Failure to Maintain Current Records)

13. Respondents Hanh and Huynh are subject to disciplinary action under Business and Professions Code section 4300 and section 4301, subdivisions (j) and (o), on the grounds of unprofessional conduct for violating Business and Professions Code section 4081, subdivision (a), section 4113, and section 4332, in conjunction with California Code of Regulations, title 16, section 1718, in that Respondents failed to maintain complete and accurate records of the current inventory on the premises, as follows:

a. Failed to provide documentation of acquisition or disposition of unit-dose drugs.

b. Failed to provide documentation of which drugs Respondents donated to charity.

c. Failed to provide documentation regarding the acquisition of the drugs Reopro, Cathflo Activase, and Romazecon.

d. Failed to provide documentation regarding the acquisition of the drugs Respondent Huynh claimed he received from the USC Hospital.

e. Failed to provide acquisition records from January 1, 2001 to March 13, 2003, for unit-dose drugs that reverse distributer Capital Returns credited to Respondent in the amount of $10,557.32.

SECOND CAUSE FOR DISCIPLINE

(Subverting Board Investigation)

14. Respondent Huynh is subject to disciplinary action under Business and Professions Code sections 4300 and 4301, for unprofessional conduct, within the meaning of sections 4301 subdivisions (j), (o) and (q), in that Respondent subverted a Board of Pharmacy investigation, as follows:

a. Respondent admittedly removed unit-dose medications from Hanh Pharmacy to his personal vehicle off the premises in order to preclude inspectors from finding violations with the placement of the unit-dose medications.

b. Respondent lied to Board inspectors and accused them of taking the removed unit-dose medications from the premises when they had been at the pharmacy the day before.

c. Respondent refused to explain Hanh Pharmacy's acquisition of the drugs Reopro, Cathflo Activase, and Romazecon.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

15. Respondents Hanh and Huynh are subject to disciplinary action under sections 4300 and 4301, for unprofessional conduct, within the meaning of sections 4301, subdivisions (j) and (o), in that Respondents violated or attempted to violate, directly or indirectly, a provision or term of the Pharmacy Law or the applicable federal and state laws governing pharmacy, as more fully set forth above in paragraphs 13 and 14.

///

///

///

///

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 Original Pharmacy Permit No. PHY41142, issued to Hanh Pharmacy;

2. Revoking or suspending Pharmacist License No. RPH 40626, issued to Hanry H. Huynh;

3. Ordering Hanh Pharmacy and Hanry H. Huynh 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;

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

DATED: 1/12/04

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California

Complainant

03583110-LA2003600357
jz / rse rev (11/04/03)