

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

In the Matter of the Accusation Against:

Case No. 3335

**TOP CARE PHARMACY**

NGA NGUYEN

President and Pharmacist-in-Charge

8121 California Avenue

South Gate, CA 90780

Pharmacy Permit No. PHY 44224

and

**NGA TAN NGUYEN**

**a.k.a. NGA NGUYEN**

**a.k.a. JIMMY NGUYEN**

8121 California Avenue

South Gate, CA 90780

Pharmacist License No. RPH 43814

Respondent.

**DECISION AND ORDER**

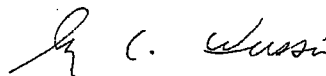
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on August 19, 2011.

It is so ORDERED July 20, 2011.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



\_\_\_\_\_  
STANLEY C. WEISSER  
Board President

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Attorney General of California  
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8 **BEFORE THE**  
9 **BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 3335  
OAH No. 2010060406

12 **TOP CARE PHARMACY,**  
13 **NGA NGUYEN,**  
President and Pharmacist-In-Charge  
14 8121 California Avenue  
South Gate, CA 90780

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

15 Pharmacy Permit No. PHY 44224

16 **and**

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

21 Pharmacist License No. RPH 43814

22  
23 Respondents.

24 In the interest of a prompt and speedy settlement of this matter, consistent with the  
25 public interest and the responsibility of the Board of Pharmacy of the Department of Consumer  
26 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order  
27 which will be submitted to the Board for approval and adoption as the final disposition of this  
28 Accusation.

1 PARTIES

2 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.  
3 She brought this action solely in her official capacity and is represented in this matter by Edmund  
4 G. Brown Jr., Attorney General of the State of California, by Susan Melton Wilson, Deputy  
5 Attorney General.

6 2. Nga Tan Nguyen a.k.a. Nga Nguyen a.k.a. Jimmy Nguyen, is President and  
7 authorized representative of Respondent Top Care Pharmacy, a corporation licensed to do  
8 business as Top Care Pharmacy. As an individual licensee and in his capacity as the authorized  
9 representative of Respondent Top Care, he is represented in this proceeding by attorney Norman  
10 A. Mathews, whose address is: 17700 Castleton Street, suite 350, City of Industry, CA 91748.

11 3. On or about July 9, 1999, the Board of Pharmacy (Board) issued Pharmacy Permit  
12 No. PHY 44224 to Top Care Pharmacy and Nga Tan Nguyen a.k.a. Nga Nguyen a.k.a. Jimmy  
13 Nguyen, President (Respondent Pharmacy). Nga Tan Nguyen is and has been the Pharmacist-In-  
14 Charge since August 9, 2004. The Pharmacy Permit was in full force and effect at all times  
15 relevant to the charges brought herein and will expire on July 1, 2011, unless renewed.

16 4. On or about August 14, 1990, the Board issued Pharmacist License No. RPH 43814  
17 to Nga Tan Nguyen a.k.a. Nga Nguyen a.k.a. Jimmy Nguyen (Respondent Nguyen). The  
18 Pharmacist License was in full force and effect at all times relevant to the charges brought herein  
19 and will expire on July 31, 2012, unless renewed.

20 JURISDICTION

21 4. Accusation No. 3335 was filed before the Board of Pharmacy (Board) , Department  
22 of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other  
23 statutorily required documents were properly served on Respondent on October 7, 2010.  
24 Respondent timely filed its Notice of Defense contesting the Accusation. A copy of Accusation  
25 No. 3335 is attached as **Exhibit A** and incorporated herein by reference.

26 ADVISEMENT AND WAIVERS

27 5. Respondent Top Care, by its authorized representative, has carefully read, fully  
28 discussed with counsel, and understands the charges and allegations in Accusation No. 3335.

1 Respondent has also carefully read, fully discussed with counsel, and understands the effects of  
2 this Stipulated Settlement and Disciplinary Order.

3 6. Respondent Top Care, by its authorized representative, is fully aware of its legal  
4 rights in this matter, including the right to a hearing on the charges and allegations in the  
5 Accusation; the right to be represented by counsel at its own expense; the right to confront and  
6 cross-examine the witnesses against them; the right to present evidence and to testify on its own  
7 behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the  
8 production of documents; the right to reconsideration and court review of an adverse decision;  
9 and all other rights accorded by the California Administrative Procedure Act and other applicable  
10 laws.

11 7. Respondent Top Care, by its authorized representative, voluntarily, knowingly, and  
12 intelligently waives and gives up each and every right set forth in paragraph 6 above.

13 8. Respondent Nga Tan Nguyen has carefully read, fully discussed with counsel, and  
14 understands the charges and allegations in Accusation No. 3335. Respondent has also carefully  
15 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and  
16 Disciplinary Order.

17 9. Respondent Nga Tan Nguyen is fully aware of his legal rights in this matter,  
18 including the right to a hearing on the charges and allegations in the Accusation; the right to be  
19 represented by counsel at its own expense; the right to confront and cross-examine the witnesses  
20 against him; the right to present evidence and to testify on his own behalf; the right to the  
21 issuance of subpoenas to compel the attendance of witnesses and the production of documents;  
22 the right to reconsideration and court review of an adverse decision; and all other rights accorded  
23 by the California Administrative Procedure Act and other applicable laws.

24 10. Respondent Nga Tan Nguyen voluntarily, knowingly, and intelligently waives and  
25 gives up each and every right set forth in paragraph 9 above.

#### 26 CULPABILITY

27 11. Respondent Top Care, by its authorized representative, admits the truth of each and  
28 every charge and allegation in Accusation No. 3335.

12. Respondent Top Care, by its authorized representative, agrees that its Pharmacy Permit is subject to discipline and agrees to be bound by the Board of Pharmacy's probationary terms as set forth in the Disciplinary Order below.

13. Respondent Nga Tan Nguyen admits the truth of each and every charge and allegation in Accusation No. 3335.

14. Respondent Nga Tan Nguyen agrees that his Pharmacy Permit is subject to discipline and agrees to be bound by the Board of Pharmacy's probationary terms as set forth in the Disciplinary Order below.

#### CIRCUMSTANCES IN MITIGATION

15. Respondents Top Care Pharmacy and Nga Tan Nguyen have never been the subject of any disciplinary action, and are admitting responsibility at an early stage in the proceedings. Respondents maintain that they did not act dishonestly, and did not knowingly aid or abet dishonest employee J.M.. Respondents have created and implemented a corrective plan of action that is extensive and designed to minimize risk of further incidents of employee theft. It appears at this time, that public safety will not be harmed by probationary licensure of these Respondents.

#### CONTINGENCY

16. 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, and each of them, understand and agree that they may not withdraw its 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.

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17. 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.

18. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

19. 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 Pharmacy Permit No. PHY 44224 issued to Top Care Pharmacy, a corporation doing business as Top Care Pharmacy, is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the terms and conditions set forth below.

IT IS FURTHER ORDERED that Pharmacist License No. RPH 43814 issued to Nga Tan Nguyen a.k.a. Nga Nguyen a.k.a. Jimmy Nguyen is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the terms and conditions set forth below.

**TERMS AND CONDITIONS FOR  
TOP CARE PHARMACY - PHARMACY PERMIT NO. PHY 44224  
ARE LISTED BELOW:**

**1. Obey All Laws - Pharmacy Permit No. PHY 44224**

Respondent Top Care Pharmacy ("owner") shall obey all state and federal laws and regulations.

Respondent owner shall report any of the following occurrences to the board, in

1 writing, within seventy-two (72) hours of such occurrence:

- 2 ☐ an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy  
3 Law, state and federal food and drug laws, or state and federal controlled substances laws  
4 ☐ a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal  
5 complaint, information or indictment  
6 ☐ a conviction of any crime  
7 ☐ discipline, citation, or other administrative action filed by any state or federal agency which  
8 involves respondent's pharmacy permit or which is related to the practice of pharmacy or the  
9 manufacturing, obtaining, handling or distributing, billing, or charging for any drug, device or  
10 controlled substance.  
11

12 Failure to timely report any such occurrence shall be considered a violation of  
13 probation.

14 **2. Report to the Board - Pharmacy Permit No. PHY 44224**

15 Respondent owner shall report to the board quarterly, on a schedule as directed by the  
16 board or its designee. The report shall be made either in person or in writing, as directed. Among  
17 other requirements, respondent owner shall state in each report under penalty of perjury whether  
18 there has been compliance with all the terms and conditions of probation. Failure to submit  
19 timely reports in a form as directed shall be considered a violation of probation. Any period(s) of  
20 delinquency in submission of reports as directed may be added to the total period of probation.  
21 Moreover, if the final probation report is not made as directed, probation shall be automatically  
22 extended until such time as the final report is made and accepted by the board.  
23

24 **3. Interview with the Board - Pharmacy Permit No. PHY 44224**

25 Upon receipt of reasonable prior notice, respondent owner shall appear in person for  
26 interviews with the board or its designee, at such intervals and locations as are determined by the  
27  
28

board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

**4. Cooperate with Board Staff - Pharmacy Permit No. PHY 44224**

Respondent owner shall cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of their probation. Failure to cooperate shall be considered a violation of probation.

**5. Reimbursement of Board Costs-Pharmacy Permit No. PHY 44224**

Respondent Owner and Respondent Nga Tan Nguyen a.k.a. Nga Nguyen a.k.a. Jimmy Nguyen shall be jointly and severally liable for payment to the Board of its costs of investigation and prosecution in this matter, which are agreed to be Seven Thousand, Five Hundred Dollars (\$7,500.00). As a condition precedent to successful completion of probation, Respondent Owner shall pay costs of investigation and prosecution in accord with this agreement.

Respondent Owner and Respondent Nga Tan Nguyen a.k.a. Nga Nguyen a.k.a. Jimmy Nguyen shall jointly and severally make said payment as follows:

Respondents shall make twenty (20) monthly payments of Three Hundred and Seventy Five Dollars (\$375.00), by means of automatic withdrawal from Respondents' account(s), or as directed by the board or its designee, on or about the first day of each month, said payments commencing thirty (30) days after the effective date of the decision, and continuing for twenty (20) consecutive months thereafter. Respondents may pay the full remaining unpaid balance at any time.

There shall be no deviation from this schedule absent prior written approval by the board or its designee. It shall be Respondents' responsibility make these payments in a timely manner. Failure to pay costs by the deadline(s) as directed shall be considered a violation of



1 probation.

2 The filing of bankruptcy by respondent owner shall not relieve respondent of their  
3 responsibility to reimburse the board its costs of investigation and prosecution.

4 **6. Probation Monitoring Costs - Pharmacy Permit No. PHY 44224**

5 Respondent owner shall pay any costs associated with probation monitoring as  
6 determined by the board each and every year of probation. Such costs shall be payable to the  
7 board on a schedule as directed by the board or its designee. Failure to pay such costs by the  
8 deadline(s) as directed shall be considered a violation of probation.  
9

10 **7. Status of License - Pharmacy Permit No. PHY 44224**

11 Respondent owner shall, at all times while on probation, maintain current licensure  
12 with the board. If respondent owner submits an application to the board, and the application is  
13 approved, for a change of location, change of permit or change of ownership, the board shall  
14 retain continuing jurisdiction over the license, and the respondent shall remain on probation as  
15 determined by the board. Failure to maintain current licensure shall be considered a violation of  
16 probation.  
17

18 If respondent owner's license expires or is cancelled by operation of law or otherwise  
19 at any time during the period of probation, including any extensions thereof or otherwise, upon  
20 renewal or reapplication respondent owner's license shall be subject to all terms and conditions of  
21 this probation not previously satisfied.

22 **8. License Surrender While on Probation - Pharmacy Permit No. PHY 44224**

23 Following the effective date of this decision, should respondent owner discontinue  
24 business, respondent owner may tender the premises license to the board for surrender. The  
25 board or its designee shall have the discretion whether to grant the request for surrender or take  
26 any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of  
27  
28

1 the license, respondent will no longer be subject to the terms and conditions of probation.

2 Upon acceptance of the surrender, respondent owner shall relinquish the premises and  
3 renewal license to the board within ten (10) days of notification by the board that the surrender is  
4 accepted. Respondent owner shall further submit a completed Discontinuance of Business form  
5 according to board guidelines and shall notify the board of the records inventory transfer.

6 Respondent owner shall also, by the effective date of this decision, arrange for the continuation of  
7 care for ongoing patients of the pharmacy by, at minimum, providing a written notice to ongoing  
8 patients that specifies the anticipated closing date of the pharmacy and that identifies one or more  
9 area pharmacies capable of taking up the patients' care, and by cooperating as may be necessary  
10 in the transfer of records or prescriptions for ongoing patients. Within five days of its provision  
11 to the pharmacy's ongoing patients, Respondent owner shall provide a copy of the written notice  
12 to the board. For the purposes of this provision, "ongoing patients" means those patients for  
13 whom the pharmacy has on file a prescription with one or more refills outstanding, or for whom  
14 the pharmacy has filled a prescription within the preceding sixty (60) days.

15 Respondent owner may not apply for any new licensure from the board for three (3) years from  
16 the effective date of the surrender. Respondent owner shall meet all requirements applicable to  
17 the license sought as of the date the application for that license is submitted to the board.

18 Respondent owner further stipulates that he or she shall reimburse the board for its costs of  
19 investigation and prosecution prior to the acceptance of the surrender.

20 **9. Notice to Employees- Pharmacy Permit No. PHY 44224**

21 Respondent owner shall, upon or before the effective date of this decision, ensure that  
22 all employees involved in permit operations are made aware of all the terms and conditions of  
23 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.  
24 If the notice required by this provision is posted, it shall be posted in a prominent place and shall  
25

1 remain posted throughout the probation period. Respondent owner shall ensure that any  
2 employees hired or used after the effective date of this decision are made aware of the terms and  
3 conditions of probation by posting a notice, circulating a notice, or both. Additionally,  
4 respondent owner shall submit written notification to the board, within fifteen (15) days of the  
5 effective date of this decision, that this term has been satisfied. Failure to submit such  
6 notification to the board shall be considered a violation of probation.

7 "Employees" as used in this provision includes all full-time, part-time, volunteer, temporary and  
8 relief employees and independent contractors employed or hired at any time during probation.  
9

10 **10. Owners and Officers: Knowledge of the Law - Pharmacy Permit**  
11 **No. PHY 44224**

12 Respondent shall provide, within thirty (30) days after the effective date of this  
13 decision, signed and dated statements from its owners, including any owner or holder of ten  
14 percent (10%) or more of the interest in respondent or respondent's stock, and any officer, stating  
15 under penalty of perjury that said individuals have read and are familiar with state and federal  
16 laws and regulations governing the practice of pharmacy. The failure to timely provide said  
17 statements under penalty of perjury shall be considered a violation of probation.

18 **11. Posted Notice of Probation- Pharmacy Permit No. PHY 44224**

19 Respondent owner shall prominently post a probation notice provided by the board in  
20 a place conspicuous and readable to the public. The probation notice shall remain posted during  
21 the entire period of probation.  
22

23 Respondent owner shall not, directly or indirectly, engage in any conduct or make  
24 any statement which is intended to mislead or is likely to have the effect of misleading any  
25 patient, customer, member of the public, or other person(s) as to the nature of and reason for the  
26 probation of the licensed entity.  
27

28 Failure to post such notice shall be considered a violation of probation.

12. **Violation of Probation- Pharmacy Permit No. PHY 44224**

If a respondent owner has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent license, and probation shall be automatically 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 that was stayed.

If respondent owner violates probation in any respect, the board, after giving respondent owner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. 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 automatically extended until the petition to revoke probation or accusation is heard and decided.

13. **Completion of Probation- Pharmacy Permit No. PHY 44224**

Upon written notice by the board or its designee indicating successful completion of probation, respondent owner's license will be fully restored.

14. **Civil Administrative Penalty – Pharmacy Permit No. PHY 44224**

Respondent Top Care shall pay an administrative penalty of Ten Thousand Dollars (\$10,000.00). Respondent shall make payment of the assessed administrative penalty as follows.

Respondent shall make Twenty Five (25) monthly payments of Four Hundred Dollars (\$400.00), by means of automatic withdrawal from Respondent's account, or as directed by the board or its designee, on or about the first day of each month, said payments commencing thirty (30) days after the effective date of the decision, and continuing for twenty-five (25)

consecutive months thereafter. Respondent may pay the full remaining unpaid balance at any time.

There shall be no deviation from this schedule absent prior written approval by the board or its designee. It shall be Respondent's responsibility to make these payments in a timely manner. Failure to make any payment when due shall be considered a violation of probation.

**15. Community Services Program-- Pharmacy Permit No. PHY 44224**

Within sixty (60) days of the effective date of this decision, Respondent Owner shall submit to the board or its designee, for prior approval, a community service program in which respondent shall provide free health-care related services to a community or charitable facility or agency for Fifty (50) Hours during the first year of probation.

Within thirty (30) days of board approval thereof, Respondent Owner shall submit documentation to the board demonstrating commencement of the community service program. Respondent owner shall report on progress with the community service program in the quarterly reports.

Failure to timely submit, commence, or comply with the program shall be considered a violation of probation.

**16. Separate File of Records**

Respondent shall maintain and make available for inspection a separate file of all records pertaining to the acquisition or disposition of all controlled substances. Failure to maintain such file or make it available for inspection shall be considered a violation of probation.

**TERMS AND CONDITIONS FOR**  
**APPLICABLE TO NGA TAN NGUYEN**  
**PHARMACIST LICENSE NO. RPH 43814**  
**ARE LISTED BELOW:**

**17. Suspension- Pharmacist License No. RPH 43814**

As part of probation, Respondent is suspended from the practice of pharmacy for 60

1 (sixty) days beginning the effective date of this decision.

2 During suspension, Respondent shall not enter any pharmacy area or any portion of  
3 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor  
4 of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and  
5 devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do  
6 any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or  
7 patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee  
8 of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous  
9 drugs and devices or controlled substances.  
10

11 Respondent shall not engage in any activity that requires the professional judgment of  
12 a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy.  
13 Respondent shall not perform the duties of a pharmacy technician or a designated representative  
14 for any entity licensed by the board.  
15

16 Subject to the above restrictions, respondent may continue to own or hold an interest  
17 in any licensed premises in which he holds an interest at the time this decision becomes effective  
18 unless otherwise specified in this order.

19 Failure to comply with this suspension shall be considered a violation of probation.

20 **18. Obey All Laws - Pharmacist License No. RPH 43814**

21 Respondent shall obey all state and federal laws and regulations.

22 Respondent shall report any of the following occurrences to the board, in writing, within seventy-  
23 two (72) hours of such occurrence:  
24

- 25 • an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy  
26 Law, state and federal food and drug laws, or state and federal controlled substances laws
- 27 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal  
28

complaint, information or indictment

- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report such occurrence shall be considered a violation of probation.

**19. Report to the Board - Pharmacist License No. RPH 43814**

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

**20. Interview with the Board- Pharmacist License No. RPH 43814**

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

**21. Cooperate with Board Staff - Pharmacist License No. RPH 43814**

Respondent shall cooperate with the board's inspection program and with the board's

1 monitoring and investigation of respondent's compliance with the terms and conditions of his  
2 probation. Failure to cooperate shall be considered a violation of probation.

3 **22. Continuing Education- Pharmacist License No. RPH 43814**

4 Respondent shall provide evidence of efforts to maintain skill and knowledge as a  
5 pharmacist as directed by the board or its designee.

6 **23. Notice to Employers- Pharmacist License No. RPH 43814**

7 During the period of probation, respondent shall notify all present and prospective  
8 employers of the decision in case number 3335 and the terms, conditions and restrictions imposed  
9 on respondent by the decision, as follows:  
10

11 Within thirty (30) days of the effective date of this decision, and within fifteen (15)  
12 days of respondent undertaking any new employment, respondent shall cause his direct  
13 supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during  
14 respondent's tenure of employment) and owner to report to the board in writing acknowledging  
15 that the listed individual(s) has/have read the decision in case number 3335, and terms and  
16 conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s)  
17 and/or supervisor(s) submit timely acknowledgment(s) to the board.  
18

19 If respondent works for or is employed by or through a pharmacy employment  
20 service, respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every  
21 entity licensed by the board of the terms and conditions of the decision in case number 3335 in  
22 advance of the respondent commencing work at each licensed entity. A record of this notification  
23 must be provided to the board upon request.  
24

25 Furthermore, within thirty (30) days of the effective date of this decision, and within  
26 fifteen (15) days of respondent undertaking any new employment by or through a pharmacy  
27 employment service, respondent shall cause his direct supervisor with the pharmacy employment  
28



1 service to report to the board in writing acknowledging that he has read the decision in case  
2 number 3335 and the terms and conditions imposed thereby. It shall be respondent's  
3 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely  
4 acknowledgment(s) to the board.

5 Failure to timely notify present or prospective employer(s) or to cause that/those  
6 employer(s) to submit timely acknowledgments to the board shall be considered a violation of  
7 probation.

8 "Employment" within the meaning of this provision shall include any full-time, part-  
9 time, temporary, relief or pharmacy management service as a pharmacist or any position for  
10 which a pharmacist license is a requirement or criterion for employment, whether the respondent  
11 is an employee, independent contractor or volunteer.

12  
13 **24: Reimbursement of Board Costs- Pharmacist License No. RPH 43814**

14 Respondent Nga Tan Nguyen and Respondent owner shall be jointly and severally  
15 liable for payment to the Board of board its costs of investigation and prosecution in this matter,  
16 which are agreed to be \$7,500.00 (Seven Thousand, Five Hundred Dollars). As a condition  
17 precedent to successful completion of probation, Respondent Nga Tan Nguyen a.k.a. Nga Nguyen  
18 a.k.a. Jimmy Nguyen shall pay costs of investigation and prosecution in accord with this  
19 agreement.

20  
21 Respondent Nga Tan Nguyen a.k.a. Nga Nguyen a.k.a. Jimmy Nguyen and  
22 Respondent owner shall jointly and severally make said payment as follows:

23 Respondents shall make twenty (20) monthly payments of Three Hundred and  
24 Seventy Five Dollars (\$375.00), by means of automatic withdrawal from Respondents'  
25 account(s), or as directed by the board or its designee, on or about the first day of each month,  
26 said payments commencing thirty (30) days after the effective date of the decision, and  
27  
28

continuing for twenty (20) consecutive months thereafter. Respondents may pay the full remaining unpaid balance at any time.

There shall be no deviation from this schedule absent prior written approval by the board or its designee. It shall be Respondents' responsibility make these payments in a timely manner. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by Respondent shall not relieve respondent of their responsibility to reimburse the board its costs of investigation and prosecution.

**25. Probation Monitoring Costs- Pharmacist License No. RPH 43814**

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

**26. Status of License- Pharmacist License No. RPH 43814**

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. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

**27. License Surrender While on Probation/Suspension- Pharmacist License No. RPH 43814**

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,

1 respondent may tender his license to the board for surrender. The board or its designee shall have  
2 the discretion whether to grant the request for surrender or take any other action it deems  
3 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent  
4 will no longer be subject to the terms and conditions of probation. This surrender constitutes a  
5 record of discipline and shall become a part of the respondent's license history with the board.  
6 Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to the  
7 board within ten (10) days of notification by the board that the surrender is accepted. Respondent  
8 may not reapply for any license from the board for three (3) years from the effective date of the  
9 surrender. Respondent shall meet all requirements applicable to the license sought as of the date  
10 the application for that license is submitted to the board, including any outstanding costs.  
11

12 **28. Notification of a Change in Name, Residence Address, Mailing Address or**  
13 **Employment- Pharmacist License No. RPH 43814**

14 Respondent shall notify the board in writing within ten (10) days of any change of  
15 employment. Said notification shall include the reasons for leaving, the address of the new  
16 employer, the name of the supervisor and owner, and the work schedule if known. Respondent  
17 shall further notify the board in writing within ten (10) days of a change in name, residence  
18 address, mailing address, or phone number.  
19

20 Failure to timely notify the board of any change in employer(s), name(s), address(es),  
21 or phone number(s) shall be considered a violation of probation.

22 **29. Tolling of Probation- Pharmacist License No. RPH 43814**

23 Except during periods of suspension, respondent shall, at all times while on  
24 probation, be employed as a pharmacist in California for a minimum of 40 (forty) hours per  
25 calendar month. Any month during which this minimum is not met shall toll the period of  
26 probation, i.e., the period of probation shall be extended by one month for each month during  
27 which this minimum is not met. During any such period of tolling of probation, respondent must  
28

1 nonetheless comply with all terms and conditions of probation.

2 Should respondent, regardless of residency, for any reason (including vacation) cease  
3 practicing as a pharmacist for a minimum of 40 (forty) hours per calendar month in California,  
4 respondent must notify the board in writing within ten (10) days of the cessation of practice, and  
5 must further notify the board in writing within ten (10) days of the resumption of practice. Any  
6 failure to provide such notification(s) shall be considered a violation of probation.

7  
8 It is a violation of probation for respondent's probation to remain tolled pursuant to  
9 the provisions of this condition for a total period, counting consecutive and non-consecutive  
10 months, exceeding thirty-six (36) months.

11 "Cessation of practice" means any calendar month during which respondent is not  
12 practicing as a pharmacist for at least 40 (forty) hours, as defined by Business and Professions  
13 Code section 4000 et seq. "Resumption of practice" means any calendar month during which  
14 respondent is practicing as a pharmacist for at least 40 (forty) hours as a pharmacist as defined by  
15 Business and Professions Code section 4000 et seq.

16  
17 **30. Violation of Probation- Pharmacist License No. RPH 43814**

18 If a respondent has not complied with any term or condition of probation, the board  
19 shall have continuing jurisdiction over respondent, and probation shall automatically be extended,  
20 until all terms and conditions have been satisfied or the board has taken other action as deemed  
21 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and  
22 to impose the penalty that was stayed.

23  
24 If respondent violates probation in any respect, the board, after giving respondent  
25 notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order  
26 that was stayed. Notice and opportunity to be heard are not required for those provisions stating  
27 that a violation thereof may lead to automatic termination of the stay and/or revocation of the  
28

1 license. If a petition to revoke probation or an accusation is filed against respondent during  
2 probation, the board shall have continuing jurisdiction and the period of probation shall be  
3 automatically extended until the petition to revoke probation or accusation is heard and decided.

4 **31. Completion of Probation- Pharmacist License No. RPH 43814**

5 Upon written notice by the board or its designee indicating successful completion of  
6 probation, respondent's license will be fully restored.

7 **32. Community Services Program- Pharmacist License No. RPH 43814**

8  
9 Within sixty (60) days of the effective date of this decision, respondent shall submit  
10 to the board or its designee, for prior approval, a community service program in which respondent  
11 shall provide free health-care related services on a regular basis to a community or charitable  
12 facility or agency for a total of Four Hundred (400) Hours; Eighty (80) hours of community  
13 service per year for every year of probation. Within thirty (30) days of board approval thereof,  
14 respondent shall submit documentation to the board demonstrating commencement of the  
15 community service program. A record of this notification must be provided to the board upon  
16 request. Respondent shall report on progress with the community service program in the  
17 quarterly reports. Failure to timely submit, commence, or comply with the program shall be  
18 considered a violation of probation.  
19

20 **33. Remedial Education- Pharmacist License No. RPH 43814**

21 Within Ninety (90) days of the effective date of this decision, respondent shall submit  
22 to the board or its designee, for prior approval, an appropriate program of remedial education  
23 related to pharmacy security. The program of remedial education shall consist of at least thirty-  
24 seven (37) hours, which shall be completed during the first three years of probation at  
25 Respondent's own expense. All remedial education shall be in addition to, and shall not be  
26 credited toward, continuing education (CE) courses used for license renewal purposes.  
27  
28

1 Failure to timely submit or complete the approved remedial education shall be  
2 considered a violation of probation. The period of probation will be automatically extended until  
3 such remedial education is successfully completed and written proof, in a form acceptable to the  
4 board, is provided to the board or its designee.

5 Following the completion of each course, the board or its designee may require the  
6 respondent, at his own expense, to take an approved examination to test the respondent's  
7 knowledge of the course. If the respondent does not achieve a passing score on the examination,  
8 this failure shall be considered a violation of probation. Any such examination failure shall  
9 require respondent to take another course approved by the board in the same subject area.  
10

11 **34. No New Ownership of Licensed Premises- Pharmacist License No. RPH**  
12 **43814**

13 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve  
14 as a manager, administrator, member, officer, director, trustee, associate, or partner of any  
15 additional business, firm, partnership, or corporation licensed by the board. If respondent  
16 currently owns or has any legal or beneficial interest in, or serves as a manager, administrator,  
17 member, officer, director, trustee, associate, or partner of any business, firm, partnership, or  
18 corporation currently or hereinafter licensed by the board, respondent may continue to serve in  
19 such capacity or hold that interest, but only to the extent of that position or interest as of the  
20 effective date of this decision. Violation of this restriction shall be considered a violation of  
21 probation.  
22

23 **35. Report of Controlled Substances - Pharmacist License No. RPH 43814**

24 Respondent shall prepare quarterly reports to the board detailing the total acquisition  
25 and disposition of such controlled substances as the board may direct. Respondent shall specify  
26 the manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g., from a  
27 manufacturer, from another retailer, etc.) of such controlled substances. Failure to timely prepare  
28

1 such reports, or present such reports for inspection as directed by the board or its designee, shall  
2 be considered a violation of probation.

3 **36. Consultant for Owner or Pharmacist-In-Charge- Pharmacist License No.**  
4 **RPH 43814**

5 During the period of probation, respondent shall not supervise any intern pharmacist,  
6 or serve as a consultant to any entity licensed by the board. In the event that the respondent is  
7 currently the pharmacist-in-charge of a pharmacy, the pharmacy shall retain an independent  
8 consultant at its own expense who shall be responsible for reviewing pharmacy operations on a  
9 monthly basis for the first year of probation, compliance by respondent with state and federal  
10 laws and regulations governing the practice of pharmacy and for compliance by respondent with  
11 the obligations of a pharmacist-in-charge.

12 After the first year of probation, so long as Respondent is fully compliant with all  
13 terms of probation, the board or its designee shall permit the review of pharmacy operations by a  
14 consultant on a quarterly basis.

15 After three years of probation, so long as Respondent is fully compliant with all terms  
16 of probation, the board or its designee shall consider modification of this requirement to cease all  
17 review of pharmacy operations by a consultant.

18 The consultant shall be a pharmacist licensed by and not on probation with the board  
19 and whose name shall be submitted to the board or its designee, for prior approval. Within thirty  
20 (30) days of the effective date of this decision. Respondent shall not be a pharmacist-in-charge at  
21 more than one pharmacy or at any pharmacy of which he is not the current pharmacist-in-charge.  
22 The board may, in case of an employment change by respondent or for other reasons as deemed  
23 appropriate by the board or its designee, preclude the respondent from acting as a pharmacist-in-  
24 charge. Failure to timely retain, seek approval of, or ensure timely reporting by the consultant  
25 shall be considered a violation of probation.  
26  
27  
28

1 ///

## 2 37. Tolling of Suspension- Pharmacist License No. RPH 43814


3 During the period of suspension, respondent shall not leave California for any period  
4 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess  
5 of the (10) days during suspension shall be considered a violation of probation. Moreover, any  
6 absence from California during the period of suspension exceeding ten (10) days shall toll the  
7 suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days  
8 respondent is absent from California. During any such period of tolling of suspension,  
9 respondent must nonetheless comply with all terms and conditions of probation.  
10

11 Respondent must notify the board in writing within ten (10) days of departure, and  
12 must further notify the board in writing within ten (10) days of return. The failure to provide such  
13 notification(s) shall constitute a violation of probation. Upon such departure and return,  
14 respondent shall not resume the practice of pharmacy until notified by the board that the period of  
15 suspension has been satisfactorily completed.  
16

17 ACCEPTANCE

18 I, Nga Tan Nguyen a.k.a. Nga Nguyen a.k.a. Jimmy Nguyen, am the authorized  
19 representative of Top Care Pharmacy, a corporation, and have carefully read the above Stipulated  
20 Settlement and Disciplinary Order and have fully discussed it with attorney Norman A. Mathews.  
21 I/we understand the stipulation and the effect it will have on Pharmacy Permit No. PHY 44224.  
22 On behalf of Top Care Pharmacy, a corporation, I enter into this Stipulated Settlement and  
23 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
24 Decision and Order of the Board of Pharmacy.


25 DATED: 11/05/2010

26   
27 NGA TAN NGUYEN a.k.a. NGA NGUYEN a.k.a.  
28 JIMMY NGUYEN  
PRESIDENT  
TOP CARE PHARMACY  
Respondent



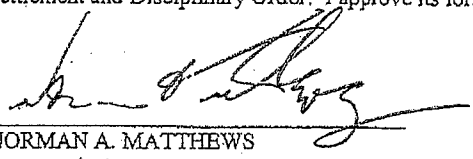
1 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
2 discussed it with my attorney, Norman A. Mathews. I understand the stipulation and the effect it  
3 will have on my Pharmacy Permit. I enter into this Stipulated Settlement and Disciplinary Order  
4 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the  
5 Board of Pharmacy.

6 DATED: 11/05/2010

  
7 NGA TAN NGUYEN a.k.a. NGA NGUYEN a.k.a.  
8 JIMMY NGUYEN  
9 Respondent

10 I have read and fully discussed with Nga Tan Nguyen all terms and conditions and other  
11 matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form  
12 and content.

13 DATED: 11/06/10

  
14 NORMAN A. MATTHEWS  
15 Attorney for Respondent


16  
17 ENDORSEMENT

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

20  
21 DATED: 12-22-10

Respectfully Submitted,

22 EDMUND G. BROWN JR.  
23 Attorney General of California  
24 GREGORY J. SALUTE  
25 Supervising Deputy Attorney General

  
26 SUSAN MELTON WILSON  
27 Deputy Attorney General  
28 Attorneys for Complainant

**Exhibit A**

**Accusation No. 3335**

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 SUSAN MELTON WILSON  
Deputy Attorney General  
4 State Bar No. 106902  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
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6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
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,**  
12 **NGA NGUYEN,**  
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           9.     Section 4300 states, in pertinent part, that "[e]very license issued may be suspended  
2 or revoked."

3           10.    Section 4301 states, in pertinent part:

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

8                ....

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

11               ....

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

16                               **REGULATORY PROVISIONS**

17           11.    California Code of Regulations, title 16, section 1714 states, in pertinent part:

18                "(b)       Each pharmacy licensed by the board shall maintain its facilities, space,  
19 fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and  
20 distributed. The pharmacy shall be of sufficient size and unobstructed area to accommodate the  
21 safe practice of pharmacy.

22                ...

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

28                ///

12. 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."

### COST RECOVERY

13. Section 125.3 provides that the Board may request the 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.

### CONTROLLED SUBSTANCES / DANGEROUS DRUGS

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

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

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

### SUMMARY OF FACTS

17. The following facts are common to all charges of the Accusation:

a. On or about June 21, 2007, Respondents filed a "Report of Theft or Loss of Controlled Substances" ("Report") with the Board, in which they reported significant losses of drug stock which were attributed to theft by a former employee, pharmacy technician J.M. Mendoza (JMM), who was criminally prosecuted and convicted of violating Penal Code section 487(a) (Grand Theft) for said theft.

b. In the Report, Respondents indicated that on June 6, 2007, Respondent TOP CARE PHARMACY discovered a loss of 5,000 tablets of Norco and 1,000 tablets of Vicodin ES. On or about that date, JMM admitted that he made and received delivery of unauthorized orders of drug stocks, which he disposed of in an unspecified manner.

c. Prior to June 6, 2007, Respondents paid for some of JMM's unauthorized orders, having failed to notice unauthorized entries on pharmacy invoices. JMM may have stolen or destroyed some purchase invoices to conceal diversion and theft.

d. Commencing on June 21, 2007, a selected drug audit was performed by Board inspectors. The drugs chosen for the audit were Vicodin, Vicodin ES and Norco. The audit period was from July 10, 2005 through June 21, 2007. The audit revealed shortages as follows:

DRUG	7/10/2005 INVENTORY AMOUNT	PURCHASED AMOUNT	DISPENSED AMOUNT	6/21/2007 INVENTORY AMOUNT	AMOUNT SHORT
Norco	124	198,100	4,470	155	193,599 (98 %)
Vicodin	3,353	63,300	63,892	2,308	453 (1%)
Vicodin ES	458	144,700	32,029	296	112,833 (78%)

### **FIRST CAUSE FOR DISCIPLINE**

#### **(Failure to Maintain Complete and Accurate Records)**

17. Respondents TOP CARE PHARMACY and NGA TAN NGUYEN are subject to disciplinary action under section 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and (o), in conjunction with section 4081 and California Code of Regulations, title 16, section 1718 for failure to maintain a complete and accurate record for all controlled substances/dangerous drugs received, sold, or otherwise disposed of by them. As described in paragraph 17 above, Respondents were unable to account for all controlled substances and dangerous drugs, per a selected drug audit performed by Board inspectors. The audit period was between July 10, 2005 and June 21, 2007, and revealed that 193,599 tablets of Norco, 453 tablets



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

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

PRAYER

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

1. Revoking or suspending Pharmacy Permit No. PHY 44224, issued to Top Care Pharmacy;
2. Revoking or suspending Pharmacist License No. RPH 43814, issued to Nga Tan Nguyen;
3. Ordering Top Care Pharmacy and Nga Tan Nguyen 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: 9/25/09

Virginia Herold

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

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