

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

In the Matter of the Accusation Against:

HANH LE PHAM
13231 Chestnut Street
Westminster, CA 92683

Pharmacist License No. RPH 55049

Respondent.

Case No. 3695

OAH No. 2012110402

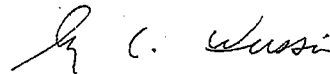
DECISION AND ORDER

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 November 12, 2013.

It is so ORDERED on November 6, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

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

12 In the Matter of the Accusation Against:

13 **HANH LE PHAM**
13231 Chestnut Street
Westminster, CA 92683

14 **Pharmacist License No. 55049**

15 Respondents.

Case No. 3695

OAH No. 2012110402

16 **STIPULATED SETTLEMENT AND**
17 **DISCIPLINARY ORDER**

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

19 PARTIES

20 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
21 She brought this action solely in her official capacity and is represented in this matter by Kamala
22 D. Harris, Attorney General of the State of California, by Jeffrey M. Phillips, Deputy Attorney
23 General.

24 2. Respondent Hanh Le Pham is represented in this proceeding by attorney Jonathan
25 Allan Klein of: KELLY, HOCKEL & KLEIN, P.C., whose address is: One Sansome Street,
26 Suite 1800, San Francisco, CA 94104-4798.

1 8. For the purpose of resolving the Accusation without the expense and uncertainty of
2 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
3 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
4 those charges.

5 RESERVATION

6 10. The admissions made by Respondent herein are only for the purposes of this
7 proceeding, or any other proceedings in which the Board of Pharmacy or other professional
8 licensing agency is involved, and shall not be admissible in any other criminal or civil
9 proceeding.

10 CONTINGENCY

11 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
12 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
13 communicate directly with the Board regarding this stipulation and settlement, without notice to
14 or participation by Respondent or his counsel. By signing the stipulation, Respondent
15 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
16 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation
17 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
18 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
19 and the Board shall not be disqualified from further action by having considered this matter.

20 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
21 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
22 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

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

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

4 **DISCIPLINARY ORDER**

5 IT IS HEREBY ORDERED that Pharmacist License No. 55049 issued to Respondent
6 Hanh Le Pham (Respondent) is revoked. However, the revocation is stayed and Respondent is
7 placed on probation for three (3) years on the following terms and conditions.

8 **1. Obey All Laws**

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

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

- 12 • an arrest or issuance of a criminal complaint for violation of any provision of the
13 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
14 substances laws
- 15 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
16 criminal complaint, information or indictment
- 17 • a conviction of any crime
- 18 • discipline, citation, or other administrative action filed by any state or federal agency
19 which involves respondent's pharmacist license or which is related to the practice of
20 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging
21 for any drug, device or controlled substance.

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

23 **2. Report to the Board**

24 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
25 designee. The report shall be made either in person or in writing, as directed. Among other
26 requirements, respondent shall state in each report under penalty of perjury whether there has
27 been compliance with all the terms and conditions of probation. Failure to submit timely reports
28 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency

1 in submission of reports as directed may be added to the total period of probation. Moreover, if
2 the final probation report is not made as directed, probation shall be automatically extended until
3 such time as the final report is made and accepted by the board.

4 **3. Interview with the Board**

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

10 **4. Cooperate with Board Staff**

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

14 **5. Continuing Education**

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

17 **6. Notice to Employers**

18 During the period of probation, respondent shall notify all present and prospective
19 employers of the decision in case number 3695 and the terms, conditions and restrictions imposed
20 on respondent by the decision, as follows:

21 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
22 respondent undertaking any new employment, respondent shall cause his direct supervisor,
23 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
24 tenure of employment) and owner to report to the board in writing acknowledging that the listed
25 individual(s) has/have read the decision in case number 3695, and terms and conditions imposed
26 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
27 submit timely acknowledgment(s) to the board.

28

1 If respondent works for or is employed by or through a pharmacy employment service,
2 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
3 licensed by the board of the terms and conditions of the decision in case number 3695 in advance
4 of the respondent commencing work at each licensed entity. A record of this notification must be
5 provided to the board upon request.

6 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
7 (15) days of respondent undertaking any new employment by or through a pharmacy employment
8 service, respondent shall cause his direct supervisor with the pharmacy employment service to
9 report to the board in writing acknowledging that he has read the decision in case number 3695
10 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
11 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

19 **7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
20 **Designated Representative-in-Charge, or Serving as a Consultant**

21 During the period of probation, respondent shall not supervise any intern pharmacist, be the
22 pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board
23 nor serve as a consultant unless otherwise specified in this order. Assumption of any such
24 unauthorized supervision responsibilities shall be considered a violation of probation.

25 **8. Reimbursement of Board Costs**

26 As a condition precedent to successful completion of probation, respondent shall pay to the
27 board its costs of investigation and prosecution in the amount of \$ 2,411.00. Respondent shall
28 make said payments within 60 days of the effective date of probation. There shall be no deviation

1 from this schedule absent prior written approval by the board or its designee. Failure to pay costs
2 by the deadline(s) as directed shall be considered a violation of probation.

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

5 **9. Probation Monitoring Costs**

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

10 **10. Status of License**

11 Respondent shall, at all times while on probation, maintain an active, current license with
12 the board, including any period during which suspension or probation is tolled. Failure to
13 maintain an active, current license shall be considered a violation of probation.

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

18 **11. License Surrender While on Probation/Suspension**

19 Following the effective date of this decision, should respondent cease practice due to
20 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
21 respondent may tender his license to the board for surrender. The board or its designee shall have
22 the discretion whether to grant the request for surrender or take any other action it deems
23 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent
24 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
25 record of discipline and shall become a part of the respondent's license history with the board.

26 Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to
27 the board within ten (10) days of notification by the board that the surrender is accepted.

28 Respondent may not reapply for any license from the board for three (3) years from the effective

1 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
2 of the date the application for that license is submitted to the board, including any outstanding
3 costs.

4 **12. Notification of a Change in Name, Residence Address, Mailing Address or**
5 **Employment**

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

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

13 **13. Tolling of Probation**

14 Except during periods of suspension, respondent shall, at all times while on probation, be
15 employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any
16 month during which this minimum is not met shall toll the period of probation, i.e., the period of
17 probation shall be extended by one month for each month during which this minimum is not met.
18 During any such period of tolling of probation, respondent must nonetheless comply with all
19 terms and conditions of probation.

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

25 It is a violation of probation for respondent's probation to remain tolled pursuant to the
26 provisions of this condition for a total period, counting consecutive and non-consecutive months,
27 exceeding thirty-six (36) months.
28

1 "Cessation of practice" means any calendar month during which respondent is
2 not practicing as a pharmacist for at least _____ hours, as defined by Business
3 and Professions Code section 4000 et seq. "Resumption of practice" means any
4 calendar month during which respondent is practicing as a pharmacist for at least
5 _____ hours as a pharmacist as defined by Business and Professions Code
6 section 4000 et seq.

7 **14. Violation of Probation**

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

13 If respondent violates probation in any respect, the board, after giving respondent notice
14 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
15 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
16 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
17 a petition to revoke probation or an accusation is filed against respondent during probation, the
18 board shall have continuing jurisdiction and the period of probation shall be automatically
19 extended until the petition to revoke probation or accusation is heard and decided.

20 **15. Completion of Probation**

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

23 **16. Community Services Program**

24 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
25 board or its designee, for prior approval, a community service program in which respondent shall
26 provide free health-care related services on a regular basis to a community or charitable facility or
27 agency for at least ten (10) hours per year for the first two years of probation. Within thirty (30)
28 days of board approval thereof, respondent shall submit documentation to the board

1 demonstrating commencement of the community service program. A record of this notification
2 must be provided to the board upon request. Respondent shall report on progress with the
3 community service program in the quarterly reports. Failure to timely submit, commence, or
4 comply with the program shall be considered a violation of probation.

5 **17. Remedial Education**

6 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
7 board or its designee, for prior approval, an appropriate program of remedial education related to
8 loss prevention of controlled substances. The program of remedial education shall consist of at
9 least 10 hours, which shall be completed within the first two years at respondent's own expense.
10 All remedial education shall be in addition to, and shall not be credited toward, continuing
11 education (CE) courses used for license renewal purposes. The remedial education shall not be a
12 correspondence course or via internet.

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

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

22 **18. Ethics Course**

23 Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll
24 in a course in ethics, at respondent's expense, approved in advance by the board or its designee.
25 Failure to initiate the course during the first year of probation, and complete it within the second
26 year of probation, is a violation of probation.

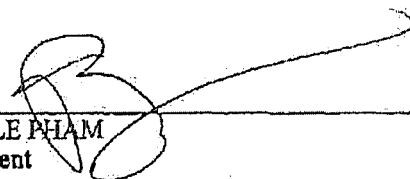
27 Respondent shall submit a certificate of completion to the board or its designee within five
28 days after completing the course.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Jonathan Allan Klein. I understand the stipulation and the effect it will have on my Pharmacist License. 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.

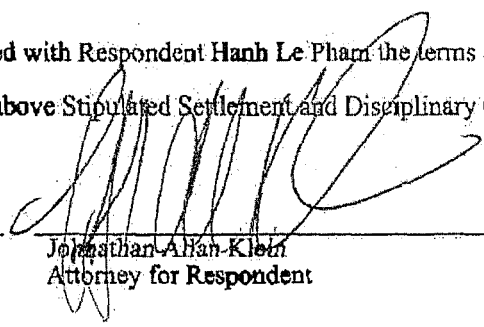
DATED: 8-23-13



HANH LE PHAM
Respondent

I have read and fully discussed with Respondent Hanh Le Pham the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 8/23/13



Jonathan Allan Klein
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: 8/23/13

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General



JEFFREY M. PHILLIPS
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 3695

1 KAMALA D. HARRIS
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2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3695

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

ACCUSATION

15 **HANH LE PHAM**
16 **13231 CHESTNUT ST.**
WESTMINSTER, CA 92683
17 **PHARMACIST LICENSE NO. RPH 55049**

18 Respondents.

19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 23 2. On or about December 24, 2002, the Board of Pharmacy issued Pharmacy Permit
24 Number PHY 46263 to Walgreens No. 06683 (Respondent Walgreens). The Pharmacy Permit
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 May 1, 2012, unless renewed.

1 3. On or about August 29, 2003, the Board of Pharmacy issued Pharmacist License
2 Number RPH 55049 to Hanh Le Pham (Respondent Pham). The license was in full force and
3 effect at all times relevant to the charges brought herein and will expire on September 30, 2013.

4 JURISDICTION

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

8 5. Section 118 of the Code states, in pertinent part, as follows:

9 "(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
10 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
11 order of a court of law, or its surrender without the written consent of the board, shall not, during
12 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
13 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
14 provided by law or to enter an order suspending or revoking the license or otherwise taking
15 disciplinary action against the licensee on any such ground.

16 "(c) As used in this section, 'board' includes an individual who is authorized by any
17 provision of this code to issue, suspend, or revoke a license, and 'license' includes 'certificate,'
18 'registration,' and 'permit.'"

19 6. Section 4300 of the Code states:

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

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

24 "(1) Suspending judgment.

25 "(2) Placing him or her upon probation.

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

27 "(4) Revoking his or her license.

28

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

3

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

9 7. Section 4301 of the Code states:

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

13

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

17

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

20

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

25 //

26 //

27 //

28

1 8. Section 4022 of the Code states

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

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

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

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

11 9. Section 4060 of the Code states:

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

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

26 ///

27 ///

28 ///

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

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

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

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

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

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

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

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

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

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

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

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

28 ///

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

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

4 COST RECOVERY

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

9 Drugs

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

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

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

18 FACTUAL BACKGROUND

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

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

13 **Respondent Walgreens**

14 **FIRST CAUSE FOR DISCIPLINE**

15 (Inadequate Pharmacy Security)

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

24 **SECOND CAUSE FOR DISCIPLINE**

25 (Failure to Report Losses)

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

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

4 THIRD CAUSE FOR DISCIPLINE

5 (Failure to Report)

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

15 Respondent Hanh Le Pham

16 FOURTH CAUSE FOR DISCIPLINE

17 (Failure to Report Losses)

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

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1 FIFTH CAUSE FOR DISCIPLINE

2 (Failure to Report)

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

16 MATTERS IN AGGRIVATION

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

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

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

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PRAYER

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

1. Revoking or suspending Pharmacy Permit Number PHY 46263, issued to Respondent Walgreens No. 06683
2. Revoking or suspending Pharmacist License Number RPH 55049, issued to Respondent Hanh Le Pham;
3. Ordering Respondent Walgreens and Respondent Hanh Le Pham to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
4. Taking such other and further action as deemed necessary and proper.

DATED: 9/12/12 Virginia Herold

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

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