

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

Note: The caption of this Decision page was amended on January 30, 2012 to correct an error in the identifying information for the pharmacy licensee.

In the Matter of the Accusation Against:

Case No. 3714

CVS PHARMACY #9849
8280 Magnolia Avenue
Riverside, CA 92504
Pharmacy Permit No. PHY 47923

and

NGUYEN NGUYEN
808 Carew Dr.
Placentia, CA 92870
Pharmacist License No. RPH 57940

Respondent.

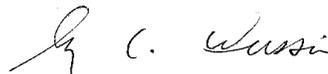
DECISION AND ORDER

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 November 17, 2011.

It is so ORDERED on October 18, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 DIANE DE KERVOR
Deputy Attorney General
4 State Bar No. 174721
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2611
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12 **CVS PHARMACY #9849**
13 **8280 Magnolia Avenue**
14 **Riverside, CA 92504**
15 **Original Permit No. PHY 47923**
16 **and**
17 **NGUYEN NGUYEN, RPH**
18 **808 Carew Dr.**
Placentia, CA 92870
19 **Original Pharmacist License No. 57940**
20 Respondents.

Case No. 3714

OAH No. 2010120735

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
RESPONDENT CVS ONLY**

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

23 PARTIES

24 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
25 She brought this action solely in her official capacity and is represented in this matter by Kamala
26 D. Harris, Attorney General of the State of California, by Diane de Kervor, Deputy Attorney
27 General.
28

1 Moreover, if the final probation report is not made as directed, probation shall be automatically
2 extended until such time as the final report is made and accepted by the board.

3 **3. Interview with the Board**

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

9 **4. Cooperate with Board Staff**

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

13 **5. Reimbursement of Board Costs**

14 As a condition precedent to successful completion of probation, respondent owner shall pay
15 to the board its costs of investigation and prosecution in the amount of \$6,500.00. Respondent
16 owner shall make said payments as approved by the Board. There shall be no deviation from this
17 schedule absent prior written approval by the board or its designee. Failure to pay costs by the
18 deadline(s) as directed shall be considered a violation of probation.

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

21 **6. Probation Monitoring Costs**

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

26 **7. Status of License**

27 Respondent owner shall, at all times while on probation, maintain current licensure with the
28 board. If respondent owner submits an application to the board, and the application is approved,

1 for a change of location, change of permit or change of ownership, the board shall retain
2 continuing jurisdiction over the license, and the respondent shall remain on probation as
3 determined by the board. Failure to maintain current licensure shall be considered a violation of
4 probation.

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

9 **8. License Surrender While on Probation/Suspension**

10 Following the effective date of this decision, should respondent owner discontinue
11 business, respondent owner may tender the premises license to the board for surrender. The
12 board or its designee shall have the discretion whether to grant the request for surrender or take
13 any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of
14 the license, respondent will no longer be subject to the terms and conditions of probation.

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

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

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

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

6 **9. Notice to Employees**

7 Respondent owner shall, upon or before the effective date of this decision, ensure that all
8 employees involved in permit operations are made aware of all the terms and conditions of
9 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.
10 If the notice required by this provision is posted, it shall be posted in a prominent place and shall
11 remain posted throughout the probation period. Respondent owner shall ensure that any
12 employees hired or used after the effective date of this decision are made aware of the terms and
13 conditions of probation by posting a notice, circulating a notice, or both. Additionally,
14 respondent owner shall submit written notification to the board, within fifteen (15) days of the
15 effective date of this decision, that this term has been satisfied. Failure to submit such
16 notification to the board shall be considered a violation of probation.

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

20 **10. Owners and Officers: Knowledge of the Law**

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

27 **11. Posted Notice of Probation**

28 Respondent owner shall prominently post a probation notice provided by the board in a

1 place conspicuous and readable to the public. The probation notice shall remain posted during
2 the entire period of probation.

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

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

8 **12. Violation of Probation**

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

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

21 **13. Completion of Probation**

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

25 **14. Community Services Program**

26 Within sixty (60) days of the effective date of this decision, respondent owner shall submit
27 to the board or its designee, for prior approval, a community service program in which respondent
28 shall provide free health-care related services to a community or charitable facility or agency for

1 at least 50 hours for the first year of probation.

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

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

8 ACCEPTANCE

9 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
10 discussed it with my attorney, Roger Morris. I understand the stipulation and the effect it will
11 have on my Original Permit. I enter into this Stipulated Settlement and Disciplinary Order
12 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
13 Board of Pharmacy.

14 DATED: 6/22/2011 *Richard B. Mazzone*
15 CVS PHARMACY #9849
16 Authorized Representative for Respondent CVS
17 *Richard B. Mazzone, R.Ph.*

17 I have read and fully discussed with Respondent CVS the terms and conditions and other
18 matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form
19 and content.

20 DATED: 6/22/2011 *Amy R. Cullen for Roger Morris*
21 ROGER MORRIS
22 Attorney for Respondent

23
24
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26 ENDORSEMENT

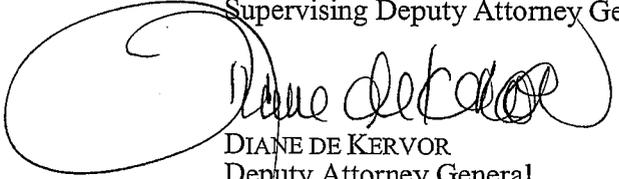
27 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
28 submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

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Dated: June 24, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General



DIANE DE KERVOR
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3714

1 EDMUND G. BROWN JR.
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 DIANE DE KERVOR
Deputy Attorney General
4 State Bar No. 174721
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2611
7 Facsimile: (619) 645-2061
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10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:	Case No. 3714
12 CVS PHARMACY #9849	A C C U S A T I O N
13 8280 Magnolia Avenue	
14 Riverside, CA 92504	
15 Original Permit No. PHY 47923,	
16 And	
17 NGUYEN NGUYEN, RPH	
18 808 Carew Dr.	
19 Placentia, CA 92870	
20 Pharmacist License No. 57940	
Respondents.	

21 Complainant alleges:

22 **PARTIES**

- 23 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
24 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 25 2. On or about September 18, 2006, the Board of Pharmacy issued Pharmacy Permit
26 Number PHY 47923 to CVS Pharmacy #9849 (Respondent CVS). The Pharmacy Permit was in
27
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1 full force and effect at all times relevant to the charges brought herein and will expire on June 1,
2 2011, unless renewed.

3 3. On or about December 14, 2005, the Board of Pharmacy issued Pharmacist License
4 Number RPH 57940 to Nguyen Nguyen (Respondent Nguyen). The Pharmacist License was in
5 full force and effect at all times relevant to the charges brought herein and will expire on October
6 31, 2011, unless renewed. Respondent Nguyen was the Pharmacist in Charge at CVS from
7 November 22, 2006, to April 18, 2007.

8 JURISDICTION

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

12 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
13 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
14 disciplinary action during the period within which the license may be renewed, restored, reissued
15 or reinstated.

16 6. Section 4300, subdivision (a) of the Code states that "Every license issued may be
17 suspended or revoked."

18 7. Section 4032 defines "license" to include any license, permit, registration, certificate,
19 or exemption issued by the board.

20 STATUTORY AUTHORITY

21 8. Section 4022 of the Code states

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

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

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

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

3 9. Section 4081 of the Code states:

4 "(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs
5 or dangerous devices shall be at all times during business hours open to inspection by authorized
6 officers of the law, and shall be preserved for at least three years from the date of making. A
7 current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary
8 food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital,
9 institution, or establishment holding a currently valid and unrevoked certificate, license, permit,
10 registration, or exemption under Division 2 (commencing with Section 1200) of the Health and
11 Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and
12 Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

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

16 10. Section 4113 of the Code states:

17 ". . . .

18 "(c) The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all
19 state and federal laws and regulations pertaining to the practice of pharmacy."

20 11. Section 4156 of the Code states:

21 A pharmacy corporation shall not do, or fail to do, any act where doing or failing to do the
22 act would constitute unprofessional conduct under any statute or regulation. In the conduct of its
23 practice, a pharmacy corporation shall observe and be bound by the laws and regulations that
24 apply to a person licensed under this chapter.

25 12. Section 4301 of the Code states:

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

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“... ”

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

“... ”

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

13. Section 4306.5 of the Code states:

“Unprofessional conduct for a pharmacist may include any of the following:

“(a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or her education, training, or experience as a pharmacist, whether or not the act or omission arises in the course of the practice of pharmacy or the ownership, management, administration, or operation of a pharmacy or other entity licensed by the board.”

14. Health and Safety Code section 11171 states:

“No person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division.”

REGULATIONS

15. Title 16, California Code of Regulations, Section 1707.2 provides:

“(a) A pharmacist shall provide oral consultation to his or her patient or the patient's agent in all care settings:

(1) upon request; or

(2) whenever the pharmacist deems it warranted in the exercise of his or her professional judgment.

(b)(1) In addition to the obligation to consult set forth in subsection (a), a pharmacist shall provide oral consultation to his or her patient or the patient's agent in any care setting in which the patient or agent is present:

(A) whenever the prescription drug has not previously been dispensed to a patient; or

1 (B) whenever a prescription drug not previously dispensed to a patient in the same dosage
2 form, strength or with the same written directions, is dispensed by the pharmacy.

3 (2) When the patient or agent is not present (including but not limited to a prescription drug
4 that was shipped by mail) a pharmacy shall ensure that the patient receives written notice: of his
5 or her right to request consultation; and a telephone number from which the patient may obtain
6 oral consultation from a pharmacist who has ready access to the patient's record.”

7 16. Title 16, California Code of Regulations, Section 1714 provides:

8 “...

9 “(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and
10 equipment so that drugs are safely and properly prepared, maintained, secured and distributed.
11 The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice
12 of pharmacy.”

13 17. Title 16, California Code of Regulations, Section 1715.6 provides:

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

16 18. Title 16, California Code of Regulations, section 1718 provides:

17 “‘Current Inventory’ as used in Sections 4081 and 4332 of the Business and Professions
18 Code shall be considered to include complete accountability for all dangerous drugs handled by
19 every licensee enumerated in Sections 4081 and 4332.”

20 COST RECOVERY

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

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FACTS SUPPORTING CAUSES FOR DISCIPLINE

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2 20. On February 23, 2009, the Board received an anonymous complaint that a Pharmacy
3 Technician had been convicted in July of 2008 for stealing hundreds of bottles of narcotics from
4 CVS Pharmacy in Riverside with the intent to sell them.

5 21. The Pharmacy Technician was employed by CVS Pharmacy from June 18, 2006 to
6 February 1, 2007. When the Pharmacist in Charge of the Pharmacy at the time, Respondent N.
7 Nguyen, suspected the theft, he reported it to the store's Loss Prevention Staff who installed
8 video cameras and monitored the Pharmacy Technician while she was on duty, catching her in the
9 act of taking the drugs off the shelves. The Pharmacy Technician was arrested and subsequently
10 convicted of embezzlement and possession of controlled substances with the intent to sell.

11 22. The Board's investigation substantiated the allegation against the Technician, who
12 surrendered her license in another action, and found further violations of pharmacy law by CVS
13 Pharmacy and the pharmacists who worked there. Those violations are at issue here.

14 23. CVS could not locate its May 2006 DEA inventory. The results of a Board audit of
15 the CVS DEA narcotics inventory from November 21, 2006 to May 1, 2007 found losses of
16 52,927 hydrocodone 10/325 pills.

17 24. The results of a CVS audit from November 21, 2006 to January 30, 2007, corrected
18 for warehouse purchases that were outside of that range, reflect a loss of 46,323 hydrocodone
19 10/325 pills, likely due to the theft. Given that the Pharmacy Technician subsequently admitted
20 to stealing drugs for nearly the entire time she worked at the pharmacy, it is quite likely that the
21 actual losses were far greater than this amount.

22 25. Although CVS Pharmacy initially reported the theft to the Bureau of Narcotic
23 Enforcement, it does not appear that the Pharmacy inventoried the actual losses from the theft and
24 the losses that were discovered were never reported to the Board.

1 loss of controlled substances to the Board within 30 days the loss. The facts supporting this cause
2 are specified in paragraphs 24-32 above and incorporated herein by reference.

3 PRAYER

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

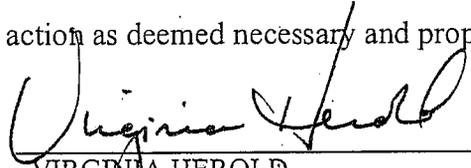
6 1. Revoking or suspending Pharmacy Permit Number PHY 47923, issued to Respondent
7 CVS Pharmacy;

8 2. Revoking or suspending Pharmacist License Number RPH 57940, issued to
9 Respondent N. Nguyen;

10 3. Ordering Respondents to pay the Board of Pharmacy the reasonable costs of the
11 investigation and enforcement of this case, pursuant to Business and Professions Code section
12 125.3;

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

14 DATED: 11/8/10



15 VIRGINIA HEROLD
16 Executive Officer
17 Board of Pharmacy
18 Department of Consumer Affairs
19 State of California
20 Complainant

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