



California State Board of Pharmacy

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BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
DEPARTMENT OF CONSUMER AFFAIRS
GOVERNOR EDMUND G. BROWN JR.

APPLICATION FOR VOLUNTARY SURRENDER OF PREMISES LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: TOTALRX PHARMACY	Case No. SI 4292
Address of Record: 30 CENTERPOINTE DR STE 14 LA PALMA CA 90623	

Pursuant to the terms and conditions of probation against my premises license with the California State Board of Pharmacy (Board) in Case No. SI 4292, I hereby request to surrender my premises license, License No. PHY 50788. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, the premises will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of the premises license history with the Board.

Upon the acceptance of the surrender, I shall relinquish my premises license to the Board within ten (10) days of notification by the Board that the surrender is accepted. I understand that I shall, among other things, submit a completed Discontinuance of Business form according to board guidelines and shall notify the board of the records inventory transfer. I may not reapply for any new licensure from the board for three (3) years from the effective date of the surrender. I further understand that I shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

Amulphar
Applicant's Signature

8/27/15.
Date

[Signature]
Executive Officer's Approval

9/9/15
Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 574-7900, 1625 N. Market Blvd., Suite N-219, Sacramento, CA 95834. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

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

In the Matter of the Statement of Issues Against:

Case No. 4292

TOTALRX PHARMACY, INC
Bickie Phan, President, Pharmacist in Charge

Applicant for Community Pharmacy License

Respondent.

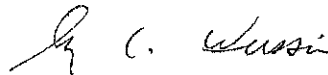
DECISION AND ORDER

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 September 17, 2012.

It is so ORDERED on August 16, 2012.

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 FRANK H. PACOE
Supervising Deputy Attorney General
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4 State Bar No. 214663
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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 Statement of Issues Against:	Case No. 4292
12 TOTALRX PHARMACY, INC.	STIPULATED SETTLEMENT AND
13 Bickie Phan, President, Pharmacist in Charge	DISCIPLINARY ORDER
14 Applicant for Community Pharmacy License	
15 Respondent.	

16 In the interest of a prompt and speedy settlement of this matter, consistent with the public
17 interest and the responsibility of the Board of Pharmacy, Department of Consumer Affairs, the
18 parties agree to the following Stipulated Settlement and Disciplinary Order to be submitted to the
19 Board for approval and adoption as the final disposition of the Statement of Issues.

21 PARTIES

- 22 1. Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy, brought
23 this action solely in her official capacity and is represented in this matter by Kamala D. Harris,
24 Attorney General of the State of California, by Joshua A. Room, Deputy Attorney General.
- 25 2. TotalRX Pharmacy, Inc., Bickie Phan, President, Pharmacist in Charge (Respondent)
26 is representing itself herein and has chosen not to exercise its right to be represented by counsel.
- 27 3. On or about September 1, 2011, the Board of Pharmacy, Department of Consumer
28 Affairs, received Community Pharmacy Permit Application (License Application) from TotalRX

1 Pharmacy, Inc., Bickie Phan, President, Pharmacist in Charge (Respondent). On or about August
2 25, 2011, Bickie Phan, President, certified under penalty of perjury as to the truthfulness of all
3 statements, answers, and representations in the License Application.

4
5 JURISDICTION

6 4. Statement of Issues No. 4292 was filed before the Board of Pharmacy (Board), and is
7 currently pending against Respondent. The Statement of Issues and all other statutorily required
8 documents were properly served on Respondent on April 5, 2012. A copy of Statement of Issues
9 No. 4292 is attached as exhibit A and incorporated herein by reference.

10
11 ADVISEMENT AND WAIVERS

12 5. Respondent has carefully read, and understands, the charges and allegations in
13 Statement of Issues No. 4292. Respondent has also carefully read, and understands the effects of,
14 this Stipulated Settlement and Disciplinary Order.

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

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24
25 CULPABILITY

26 8. Respondent admits the truth of each and every charge and allegation in Statement of
27 Issues No. 4292.

1 9. Respondent agrees that its License Application is subject to denial and agrees to be
2 bound by the Board's probationary terms as set forth in the Disciplinary Order below.
3

4 RESERVATION

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

9 CONTINGENCY

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

19 12. The parties understand and agree that facsimile copies of this stipulation, including
20 facsimile signatures thereto, shall have the same force and effect as the originals.

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

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

1 DISCIPLINARY ORDER

2 IT IS HEREBY ORDERED that, upon satisfaction of statutory and regulatory requirements
3 for issuance thereof, including but not limited to satisfaction of the bond requirement as specified
4 below, a Community Pharmacy Permit (License) shall issue to TotalRX Pharmacy, Inc., Bickie
5 Phan, President, Pharmacist in Charge (Respondent) and be immediately revoked. Revocation is
6 stayed and the License is placed on probation for four (4) years on these terms and conditions:.

7 1. **Bond Requirement**

8 Prior to issuance of the License, and as a condition precedent to issuance of the License and
9 commencement of the period of probation, respondent shall post and submit a surety bond or
10 other equivalent means of security acceptable to the board or its designee, such as an irrevocable
11 letter of credit, or a deposit in a trust account or financial institution, payable to the Pharmacy
12 Board Contingent Fund, in the amount of \$25,000.00. The purpose of the surety bond or other
13 equivalent security is to secure payment of any administrative fine imposed by the board and any
14 cost recovery ordered pursuant to Business and Professions Code section 125.3. The board or its
15 designee may make a claim against the bond or other equivalent security for any administrative
16 fine or cost recovery imposed by or due to the board if respondent fails to pay within thirty (30)
17 days of the issuance of the fine or when the fine and/or costs become final.

18 2. **Status of License**

19 Respondent shall, at all times while on probation, maintain current licensure with the board.
20 If respondent submits an application to the board, and the application is approved, for a change of
21 location, change of permit or change of ownership, the board shall retain continuing jurisdiction
22 over the license, and the respondent shall remain on probation as determined by the board.
23 Failure to maintain current licensure shall be considered a violation of probation.

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

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3. Obey All Laws

Respondent and its owner(s) shall obey all state and federal laws and regulations.

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

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

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

4. Report to the Board

Respondent's owner(s) 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's owner(s) 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.

5. Interview with the Board

Upon receipt of reasonable prior notice, respondent's owner(s) 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.

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1 **6. Cooperate with Board Staff**

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

5 **7. Notice to Employees**

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

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

18 **8. Owners and Officers: Knowledge of the Law**

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

25 **9. Posted Notice of Probation**

26 Respondent's owner(s) shall prominently post in the pharmacy a probation notice provided
27 by the board in a place conspicuous to and readable by the public. The probation notice shall
28 remain posted during the entire period of probation.

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

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

5 **10. Community Service Program**

6 Within sixty (60) days of the effective date of this decision, respondent's owner(s) shall
7 submit to the board or its designee, for prior approval, a community service program in which
8 respondent, its owner(s), and/or its employee(s), shall provide free health-care related services to
9 a community or charitable facility or agency for at least thirty (30) hours per year for the first two
10 (2) years of probation (60 hours total). Within thirty (30) days of board approval, respondent
11 shall submit documentation to the board demonstrating commencement of the community service
12 program. A record of this notification must be provided to the board upon request. Respondent
13 shall report on progress with the program in the quarterly reports. Failure to timely submit,
14 commence, comply with, or report on the program shall be considered a violation of probation.

15 **11. Report of Controlled Substance Acquisition and Disposition**

16 In the quarterly reports submitted by respondent, respondent's owner(s) shall include data
17 detailing the total acquisition(s) and disposition(s) of such controlled substances as the board or
18 its designee direct. Respondent's owner(s) shall specify the manner of disposition (e.g., by
19 prescription, due to burglary, etc.) or acquisition (e.g., from a manufacturer, from another retailer,
20 etc.) of such controlled substances, and shall submit the report signed under penalty of perjury.
21 Failure to timely prepare or submit such data shall be considered a violation of probation.

22 **12. Separate File of Records**

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

26 **13. Probation Monitoring Costs**

27 Respondent's owner(s) shall pay to the board any costs associated with probation
28 monitoring as determined by the board or its designee each and every year of probation.

1 Such costs shall be payable on a schedule as directed by the board or its designee. Failure
2 to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

3 **14. License Surrender While on Probation/Suspension**

4 Following the effective date of this decision, should respondent discontinue business,
5 respondent's owner(s) may tender the premises license to the board for surrender. The board or
6 its designee shall have the discretion whether to grant the request for surrender or take any other
7 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the
8 license, respondent will no longer be subject to the terms and conditions of probation.

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

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

22 Upon surrender, respondent's owner(s) may not apply for any new license from the board
23 for three (3) years from the effective date of the surrender. Respondent's owner(s) shall meet all
24 applicable requirements as of the date an application for a license is submitted.

25 **15. Completion of Probation**

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

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16. Violation of Probation

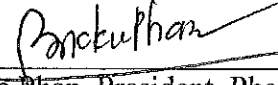
If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over the License, and probation shall be automatically extended until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the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

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke the probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

ACCEPTANCE

I have carefully read the foregoing Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it has on my Community Pharmacy Permit Application, and the Community Pharmacy Permit (License) to be issued pursuant thereto. 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: 5/1/2012



Bickie Phan, President, Pharmacist in Charge, for
TOTALRX PHARMACY, INC.
Respondent


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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: 5/8/2012

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General


JOSHUA A. ROOM
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Statement of Issues No. 4292

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Deputy Attorney General
4 State Bar No. 214663
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Attorneys for Complainant

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

10 In the Matter of the Statement of Issues Against: Case No. 4292
11 **TOTALRX PHARMACY, INC.** **STATEMENT OF ISSUES**
12 **Bickie Phan, President, Pharmacist in Charge**
13 **Applicant for Community Pharmacy License**
14 **Respondent.**

15 Complainant alleges:

16 PARTIES

- 17 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
18 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
19 2. On or about September 1, 2011, the Board of Pharmacy, Department of Consumer
20 Affairs received Community Pharmacy Permit Application (License Application) from TotalRX
21 Pharmacy, Inc., Bickie Phan, President, Pharmacist in Charge (Respondent). On or about August
22 25, 2011, Bickie Phan, President, certified under penalty of perjury as to the truthfulness of all
23 statements, answers, and representations in the License Application.

24 JURISDICTION

- 25 3. This Statement of Issues is brought before the Board of Pharmacy (Board),
26 Department of Consumer Affairs, under the authority of the following laws. All section
27 references are to the Business and Professions Code (Code) unless otherwise indicated.

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STATUTORY AND REGULATORY PROVISIONS

4. Section 4300, subdivision (c), of the Code states:

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

5. Section 4301 of the Code provides, in pertinent part, that “unprofessional conduct” is defined to include, but not be limited to, any of the following:

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

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(j) The violation of any of the statutes of this state, of 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 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.

6. Section 480 of the Code provides, in pertinent part, that

(a) A board may deny a license regulated by this code on the grounds that the applicant has: (1) been convicted of a crime; (2) done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or (3) done any act which if done by a licensee would be grounds for suspension or revocation, so long as the crime or act is substantially related to the qualifications, functions or duties of the license.

...

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application.

1 7. California Code of Regulations, title 16, section 1770, states:

2 “For the purpose of denial, suspension, or revocation of a personal or facility license
3 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
4 crime or act shall be considered substantially related to the qualifications, functions or duties of a
5 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
6 licensee or registrant to perform the functions authorized by his [or her] license or registration in
7 a manner consistent with the public health, safety, or welfare.”

8 8. Section 4113, subdivision (c), of the Code provides that the pharmacist in charge
9 shall be responsible for a pharmacy’s compliance with all state and federal laws and regulations
10 pertaining to the practice of pharmacy.

11 9. Section 4081 of the Code provides, in pertinent part, that all records of manufacture,
12 sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be kept open to
13 inspection and retained for at least three years, that a current inventory shall be kept by every
14 pharmacy that maintains a stock of dangerous drugs or dangerous devices, and that the owner(s),
15 officer(s), partner(s), and pharmacist in charge or designated representative in charge shall be
16 jointly responsible for maintaining the records and keeping the inventory.

17 10. Section 4105 of the Code requires, in pertinent part, that unless a waiver is granted by
18 the board, all records and other documentation of the acquisition and disposition of dangerous
19 drugs and devices by any entity licensed by the board be retained on the licensed premises, in a
20 readily retrievable form, for three years from the date of making.

21 8. Section 4332 of the Code makes it unlawful for any person: to fail, neglect, or refuse
22 to maintain the records required by Section 4081; or, when called upon by an authorized officer
23 or a member of the board, to fail, neglect, or refuse to produce or provide the records within a
24 reasonable time; or to willfully produce or furnish records that are false.

25 11. Section 4306.5, subdivision (a), of the Code provides that unprofessional conduct for
26 a pharmacist may also include inappropriate exercise of education, training, or experience.

27 12. California Code of Regulations, title 16, section 1714, states in pertinent part:
28

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

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

7 (e) The pharmacy owner, the building owner or manager, or a family member of a
8 pharmacist owner (but not more than one of the aforementioned) may possess a key to the
9 pharmacy that is maintained in a tamper evident container for the purpose of 1) delivering the key
10 to a pharmacist or 2) providing access in case of emergency.

11 13. California Code of Regulations, title 16, section 1718, provides, in pertinent part, that
12 "current inventory" as used in sections 4081 and 4332 of the Code means complete accountability
13 for all dangerous drugs handled by every licensee enumerated in sections 4081 and 4332.

14 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

15 14. Section 4021 of the Code states:

16 "Controlled substance" means any substance listed in Chapter 2 (commencing with Section
17 11053) of Division 10 of the Health and Safety Code."

18 15. Section 4022 of the Code states, in pertinent part:

19 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self use,
20 except veterinary drugs that are labeled as such, and includes the following:

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

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

25 16. **Hydrocodone** is a Schedule III controlled substance as designated by Health and
26 Safety Code section 11056(e)(4) and dangerous drug as designated by Business and Professions
27 Code section 4022. narcotic drug.

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1 FACTUAL BACKGROUND

2 17. On or about March 10, 2005, the Board of Pharmacy, Department of Consumer
3 Affairs, issued Pharmacist License No. RPH 56791 to Bickie Hoang Phan (Ms. Phan). That
4 License is in full force and effect and will expire on November 30, 2012, unless renewed.

5 18. From in or about January 2008 until at least March 18, 2009, Ms. Phan was employed
6 as a pharmacist and the Pharmacist in Charge at Colima Pharmacy located in Rowland Heights,
7 California. That pharmacy was the subject of an investigation conducted by the federal Drug
8 Enforcement Agency (DEA) regarding large and/or unexplained purchases of **hydrocodone**
9 between at least in or about December 2006 and in or about March 2008.

10 19. As part of the investigation, Ms. Phan was interviewed by the DEA on at least two (2)
11 occasions in or about February 2009 and March 2009. During the course of those interviews, Ms.
12 Phan made statements or reviewed documents that revealed or confirmed the following:

13 a. Ms. Phan had been employed at Colima Pharmacy, as the Pharmacist in Charge
14 and primary or sole dispensing pharmacist since on or about January 2, 2008;

15 b. Ms. Phan admitted that at least two (2) non-pharmacist personnel had keys to
16 the pharmacy where the dangerous drugs or controlled substances were stored, that were not kept
17 in a tamper-evident container solely for delivery to a pharmacist or for use in an emergency;

18 c. Ms. Phan was ostensibly in charge of placing drug orders with the wholesaler(s)
19 that supplied Colima Pharmacy, but admitted that she was not the only one with access to and/or
20 knowledge of the account(s) and password(s) needed for placing orders, that she never changed
21 the password(s) that were given to her for placing orders, and that for at least one wholesaler the
22 account and password information was kept openly accessible next to the computer;

23 d. Ms. Phan admitted that orders placed with the wholesaler(s) for large quantities
24 of **hydrocodone** on March 17 and March 19, 2008 were not placed by her, that the pharmacy did
25 not use quantities of **hydrocodone** that large for filling prescriptions, and that there would not be
26 room in the pharmacy's dedicated cabinet(s) to store those quantities of controlled substances;

27 e. Ms. Phan said there were "lots of people" in the pharmacy at that time that may
28 have been responsible for placing the orders, but she could not identify who actually did so;

1 f. Ms. Phan admitted that the wholesaler(s) called her about the large orders, and
2 that a fellow employee began to cry when Ms. Phan asked her about the orders, but she dismissed
3 the inquiry about the orders as a "mistake" on the part of the wholesaler(s) because she never saw
4 the **hydrocodone** arrive in the pharmacy or saw the invoices she was shown by the DEA, so she
5 never called the wholesaler back or followed up with the owner(s) of the pharmacy;

6 g. Ms. Phan admitted to having suspicions that one of the "lots of people" that she
7 noticed in the pharmacy during March 2008 might be selling **hydrocodone** or other drug(s), but
8 said she did not follow up on or investigate those suspicions;

9 h. There were numerous invoices showing orders of controlled substances by the
10 pharmacy that Ms. Phan admitted she did not place and/or did not recognize;

11 i. When asked about documents showing that at least 68,000 **hydrocodone** tablets
12 were ordered that were not reflected on the pharmacy's dispensing record(s), Ms. Phan admitted
13 that the **hydrocodone** were not in the inventory, and their whereabouts were unknown;

14 j. Ms. Phan admitted that she had agreed that paperwork submitted by the uncle
15 of the owner of Colima Pharmacy, a man whose name she did not know, for a pharmacy license
16 to run Boyle Heights Medical Pharmacy in Los Angeles, could list her as Pharmacist in Charge;

17 k. Ms. Phan admitted that she did not know whether operations had commenced at
18 Boyle Heights Medical Pharmacy, or whether the pharmacy was placing drug orders;

19 l. At the request of the DEA, Ms. Phan placed a recorded call to a subject of their
20 investigation, one of the owners of Colima Pharmacy, in which she asked him about the orders of
21 **hydrocodone** that were placed in March 2008, and who might have placed them;

22 m. Ms. Phan agreed to place additional recorded calls to this subject, but then later
23 changed her mind and declined to place any more calls;

24 n. Ms. Phan then informed the subject about the ongoing DEA investigation.

25 20. Among the materials submitted by Respondent as part of the Community Pharmacy
26 Permit Application is an Individual Personal Affidavit (Affidavit) signed by Ms. Phan, which she
27 signed on or about August 25, 2011, certifying under penalty of perjury as to the truthfulness of
28 all statements, answers, and representations made in the Affidavit.

1 21. The final section of the Affidavit asks Ms. Phan to list and describe "Current and past
2 employment for the past five years. (Use additional sheets if necessary)." In that section, Ms.
3 Phan listed employment as a pharmacist at Boyle Heights Pharmacy in Los Angeles from January
4 1, 2007 to October 30, 2011. She did not list any other employment, including her employment at
5 Colima Pharmacy from in or around January 2008 until at least on or about March 18, 2009.

6
7 FIRST CAUSE FOR DENIAL OF APPLICATION

8 (Dishonesty, Fraud, Deceit, or Corruption; False Document(s))

9 22. Respondent's application is subject to denial under the following section(s) of the
10 Code: 480(a)(2); 480(a)(3) by reference to 4301(f) and/or (g); and/or 4300(c) by reference to
11 4301(f) and/or (g), in that Respondent, as described in paragraphs 17-21 above, did acts involving
12 dishonesty, fraud or deceit with intent to substantially benefit herself or another, or substantially
13 injure another, did acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, and/or
14 knowingly made or signed document(s) falsely representing the existence/nonexistence of facts.

15
16 SECOND CAUSE FOR DENIAL OF APPLICATION

17 (Incomplete Inventory and/or Records of Disposition)

18 23. Respondent's application is subject to denial under the following section(s) of the
19 Code: 480(a)(2); 480(a)(3) by reference to 4301(j), (o), 4113(c), 4081, 4105, and/or 4332, and/or
20 California Code of Regulations, title 16, section 1718; and/or 4300(c) by reference to 4301(j), (o),
21 4113(c), 4081, 4105, and/or 4332, and/or California Code of Regulations, title 16, section 1718,
22 in that Respondent, as described in paragraphs 17-21 above, violated statutes regulating
23 controlled substances and dangerous drugs, violated, attempted to violate, or assisted in or abetted
24 violation of laws or regulations governing the practice of pharmacy, or in her role as Pharmacist
25 in Charge was responsible for violations of laws or regulations by Colima Pharmacy, in that the
26 inventory and/or records of disposition maintained at Colima Pharmacy were incomplete.

27 ///

28 ///

1 THIRD CAUSE FOR DENIAL OF APPLICATION

2 (Inadequate Pharmacy Security)

3 24. Respondent's application is subject to denial under the following section(s) of the
4 Code: 480(a)(2); 480(a)(3) by reference to 4301(j), (o), 4113(c), and/or California Code of
5 Regulations, title 16, section 1714; and/or 4300(c) by reference to 4301(j), (o), 4113(c), and/or
6 California Code of Regulations, title 16, section 1714, in that Respondent, as described in
7 paragraphs 17-21 above, violated statutes regulating controlled substances and dangerous drugs,
8 violated, attempted to violate, or assisted in or abetted violation of laws or regulations governing
9 the practice of pharmacy, or in her role as Pharmacist in Charge was responsible for violations of
10 laws or regulations by Colima Pharmacy, in that Colima had inadequate pharmacy security.

11
12 FOURTH CAUSE FOR DENIAL OF APPLICATION

13 (False Statement(s) of Fact on Application)

14 25. Respondent's application is subject to denial under section 480(c) of the Code in that,
15 as described in paragraphs 17-21 above, Respondent made false statement(s) of fact in the
16 application, including the omission of her employment at Colima Pharmacy from the Affidavit.

17
18 FIFTH CAUSE FOR DENIAL OF APPLICATION

19 (Unprofessional Conduct)

20 26. Respondent's application is subject to denial under section 480(a)(3) by reference to
21 section 4301 and/or section 4300(c) by reference to section 4301, in that, as described in
22 paragraphs 17-25 above, Respondent engaged in unprofessional conduct.

23
24 SIXTH CAUSE FOR DENIAL OF APPLICATION

25 (Misuse of Training, Education or Experience)

26 27. Respondent's application is subject to denial under section 480(a)(3) by reference to
27 section 4306.5(a) and/or section 4300(c) by reference to section 4306.5(a), in that, as described
28 in paragraphs 17-25 above, Respondent misused her education, training, or experience.

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PRAAYER

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. Denying the application from TotalRX Pharmacy, Inc., Bickie Phan, President, Pharmacist in Charge (Respondent) to be a Community Pharmacy;
2. Taking such other and further action as is deemed necessary and proper.

DATED: 4/2/12



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

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