

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

In the Matter of the Accusation Against:

VICKIE HANH LE
1100 Palm Avenue
San Gabriel, CA 91776

Pharmacist License No. RPH 45667

Respondent.

Case No. 4872

OAH No. 2015030464

DECISION AND ORDER

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

This Decision shall become effective on January 29, 2016.

It is so ORDERED on December 30, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
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7

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

10 In the Matter of the Accusation Against:

Case No. 4872

11 **VICKIE HANH LE**
12 **1100 Palm Avenue**
13 **San Gabriel, CA 91776**
Pharmacist License No. RPH 45667

OAH No. 2015030464
**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 Respondent.

15
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 of the Department of Consumer Affairs,
18 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will
19 be submitted to the Board for approval and adoption as the final disposition of the Accusation.
20

21 **PARTIES**

22 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
23 She brought this action solely in her official capacity and is represented in this matter by Kamala
24 D. Harris, Attorney General of the State of California, by Langston M. Edwards, Deputy Attorney
25 General.
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1 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
2 every right set forth above.

3 4 CULPABILITY

5 9. Respondent understands and agrees that the charges and allegations in Accusation
6 No. 4872, if proven at a hearing, constitute cause for imposing discipline upon her Pharmacist
7 License.

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

12 11. Respondent agrees that her Pharmacist License is subject to discipline and she agrees
13 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

14 15 CONTINGENCY

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

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

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

2 **2. Report to the Board**

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

11 **3. Interview with the Board**

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

17 **4. Cooperate with Board Staff**

18 Respondent shall cooperate with the board's inspection program and with the board's
19 monitoring and investigation of Respondent's compliance with the terms and conditions of her
20 probation. Failure to cooperate shall be considered a violation of probation.

21 **5. Continuing Education**

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

24 **6. Notice to Employers**

25 During the period of probation, Respondent shall notify all present and prospective
26 employers of the decision in case number 4872 and the terms, conditions and restrictions imposed
27 on Respondent by the decision, as follows:
28

1 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
2 Respondent undertaking any new employment, Respondent shall cause her direct supervisor,
3 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
4 tenure of employment) and owner to report to the board in writing acknowledging that the listed
5 individual(s) has/have read the decision in case number 4872, and terms and conditions imposed
6 thereby. It shall be Respondent's responsibility to ensure that her employer(s) and/or
7 supervisor(s) submit timely acknowledgment(s) to the board.

8 If Respondent works for or is employed by or through a pharmacy employment service,
9 Respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every entity
10 licensed by the board of the terms and conditions of the decision in Case No. 4872 in advance of
11 the Respondent commencing work at each licensed entity. A record of this notification must be
12 provided to the board upon request.

13 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
14 (15) days of Respondent undertaking any new employment by or through a pharmacy
15 employment service, Respondent shall cause her direct supervisor with the pharmacy
16 employment service to report to the board in writing acknowledging that she has read the decision
17 in case number 4872 and the terms and conditions imposed thereby. It shall be Respondent's
18 responsibility to ensure that her employer(s) and/or supervisor(s) submit timely
19 acknowledgment(s) to the board.

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

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

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

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

7 **8. Reimbursement of Board Costs**

8 As a condition precedent to successful completion of probation, Respondent shall pay to the
9 board its costs of investigation and prosecution in the amount of \$5,250.00. Respondent shall
10 make said payments in a payment plan approved by the Board.

11 There shall be no deviation from this schedule absent prior written approval by the board or
12 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of
13 probation.

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

16 **9. Probation Monitoring Costs**

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

21 **10. Status of License**

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

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

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

2 Following the effective date of this decision, should Respondent cease practice due to
3 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
4 Respondent may tender her license to the board for surrender. The board or its designee shall
5 have the discretion whether to grant the request for surrender or take any other action it deems
6 appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent
7 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
8 record of discipline and shall become a part of the Respondent's license history with the board.

9 Upon acceptance of the surrender, Respondent shall relinquish her pocket and wall license
10 to the board within ten (10) days of notification by the board that the surrender is accepted.
11 Respondent may not reapply for any license from the board for three (3) years from the effective
12 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
13 of the date the application for that license is submitted to the board, including any outstanding
14 costs.

15 **12. Notification of a Change in Name, Residence Address, Mailing Address or**
16 **Employment**

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

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

24 **13. Tolling of Probation**

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

1 not met. During any such period of tolling of probation, Respondent must nonetheless comply
2 with all terms and conditions of probation.

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

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

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

17 14. Violation of Probation

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

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

1 board shall have continuing jurisdiction and the period of probation shall be automatically
2 extended until the petition to revoke probation or accusation is heard and decided.

3 **15. Completion of Probation**

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

6 **16. Remedial Education**

7 Within thirty (30) days of the effective date of this decision, Respondent shall submit to the
8 board or its designee, for prior approval, an appropriate program of remedial education. The
9 program of remedial education shall consist of at least 12 hours in corresponding responsibility,
10 prescription drug abuse prevention, which shall be completed within the first two years of
11 probation at Respondent's own expense. Fifty percent (50%) of the education course must be
12 attended in person. All remedial education shall be in addition to, and shall not be credited
13 toward, continuing education (CE) courses used for license renewal purposes.

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

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

23 **17. Supervised Practice**

24 During the period of probation, Respondent shall practice only under the supervision of a
25 licensed pharmacist not on probation with the board. Upon and after the effective date of this
26 decision, Respondent shall not practice pharmacy and her license shall be automatically
27 suspended until a supervisor is approved by the board or its designee. The supervision shall be,
28 as required by the board or its designee, either:

1 Continuous – At least 75% of a work week

2 Substantial - At least 50% of a work week

3 Partial - At least 25% of a work week

4 Daily Review - Supervisor's review of probationer's daily activities within 24 hours

5 Within thirty (30) days of the effective date of this decision, Respondent shall have her
6 supervisor submit notification to the board in writing stating that the supervisor has read the
7 decision in Case No. 4872 and is familiar with the required level of supervision as determined by
8 the board or its designee. It shall be the Respondent's responsibility to ensure that her
9 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
10 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
11 acknowledgements to the board shall be considered a violation of probation.

12 If Respondent changes employment, it shall be the Respondent's responsibility to ensure
13 that her employer(s), pharmacist-in-charge and/or supervisor(s) submit timely
14 acknowledgement(s) to the board. Respondent shall have her new supervisor, within fifteen (15)
15 days after employment commences, submit notification to the board in writing stating the direct
16 supervisor and pharmacist-in-charge have read the decision in case number 4872 and is familiar
17 with the level of supervision as determined by the board. Respondent shall not practice pharmacy
18 and her license shall be automatically suspended until the board or its designee approves a new
19 supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
20 acknowledgements to the board shall be considered a violation of probation.

21 Within ten (10) days of leaving employment, Respondent shall notify the board in writing.

22 During suspension, Respondent shall not enter any pharmacy area or any portion of the
23 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
24 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
25 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
26 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
27 consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the
28 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs

1 and controlled substances. Respondent shall not resume practice until notified by the board.

2 During suspension, Respondent shall not engage in any activity that requires the
3 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
4 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
5 designated representative for any entity licensed by the board.

6 Subject to the above restrictions, Respondent may continue to own or hold an interest in
7 any licensed premises in which she holds an interest at the time this decision becomes effective
8 unless otherwise specified in this order.

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

10 **18. No Ownership of Licensed Premises**

11 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
12 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
13 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
14 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
15 days following the effective date of this decision and shall immediately thereafter provide written
16 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
17 documentation thereof shall be considered a violation of probation.

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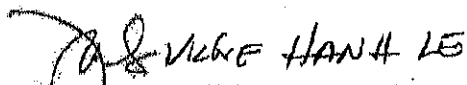
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ACCEPTANCE

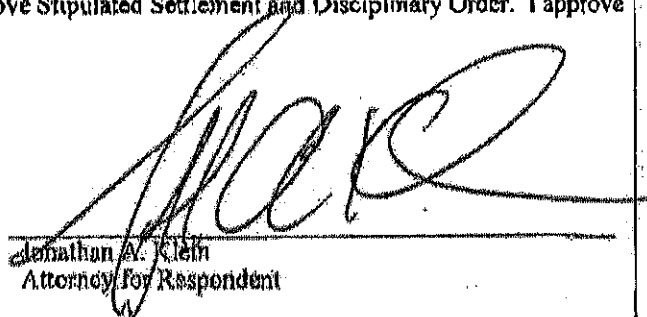
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Jonathan A. Klein. I understand the stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 9/21/2015


VICKIE HANH LE
Respondent

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

DATED: 9/21/15


Jonathan A. Klein
Attorney for Respondent

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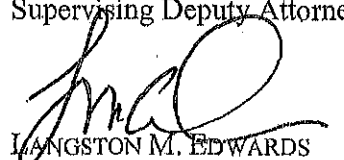
ENDORSEMENT

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

Dated: 9/22/15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ARMANDO ZAMBRANO
Supervising Deputy Attorney General



LANGSTON M. EDWARDS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4872

1 KAMALA D. HARRIS
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 LANGSTON M. EDWARDS
Deputy Attorney General
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Attorneys for Complainant

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

10
11 In the Matter of the Accusation Against:
RITE AID 5602; Vickie Le, Pharmacist-In-
12 **Charge**

Case No. 4872

13 1841 East Fourth Street
Ontario, CA 91764

ACCUSATION

14 Pharmacy Permit No. PHY 42511

15 and

16 **Vickie Le**
1100 Palm Avenue
San Gabriel, CA 91776

17 Pharmacist License No. RPH 45667

18 Respondents

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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 (Board), Department of Consumer Affairs.

25 2. On or about August 24, 1992, the Board of Pharmacy issued Pharmacist License
26 Number RPH 45667 to Vickie Le (Respondent Le). The Pharmacist License was in full force and
27 effect at all times relevant to the charges herein and will expire on June 30, 2016, unless renewed.
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1 3. On or about December 23, 1996, the Board of Pharmacy issued Pharmacy Permit
2 Number PHY 42511 to Rite Aid 5602 (Respondent Rite Aid). Vickie Le has been the
3 Pharmacist-in-Charge since March 22, 1999 (collectively, Respondents). The Pharmacy Permit
4 was in full force and effect at all times relevant to the charges brought herein and will expire on
5 April 1, 2015, unless renewed.

6
7 **JURISDICTION**

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

11 5. Section 118, subdivision (b), provides in pertinent part that the suspension,
12 expiration, or forfeiture by operation of law of a license issued by a board in the department, or its
13 suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its
14 surrender without the written consent of the board, shall not, during any period in which it may be
15 renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue
16 a disciplinary proceeding against the licensee upon any ground provided by law or to enter an
17 order suspending or revoking the license or otherwise taking disciplinary action against the
18 licensee on any such ground.

19 6. Section 4300 states, in pertinent part:

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 (5) Taking any other action in relation to disciplining him or her as the board in its

1 discretion may deem proper.”

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STATUTORY PROVISIONS

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7. Section 4081, subdivision (a) provides in pertinent part:

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“All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy ... or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.”

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8. Section 4301, subdivision (d) provides in pertinent part:

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

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(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.”

22

REGULATORY PROVISIONS

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9. California Code of Regulations, Title 16, section 1718 states:

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

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

1 10. California Code of Regulations, Title 16, section 1761 states:

2 "(a) No pharmacist shall compound or dispense any prescription which contains any
3 significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any
4 such prescription, the pharmacist shall contact the prescriber to obtain the information needed to
5 validate the prescription.

6 (b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense
7 a controlled substance prescription where the pharmacist knows or has objective reason to know
8 that said prescription was not issued for a legitimate medical purpose."

9
10 **OTHER PROVISIONS**

11 11. Health and Safety Code section 11153, subdivision (a) states in pertinent part:

12 "(a) A prescription for a controlled substance shall only be issued for a legitimate medical
13 purpose by an individual practitioner acting in the usual course of his or her professional practice.
14 The responsibility for the proper prescribing and dispensing of controlled substances is upon the
15 prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the
16 prescription. Except as authorized by this division, the following are not legal prescriptions: (1)
17 an order purporting to be a prescription which is issued not in the usual course of professional
18 treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of
19 controlled substances, which is issued not in the course of professional treatment or as part of an
20 authorized narcotic treatment program, for the purpose of providing the user with controlled
21 substances, sufficient to keep him or her comfortable by maintaining customary use."

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23 **COST RECOVERY**

24 12. Business and Professions Code section 125.3 provides in pertinent part, except as
25 otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before
26 any board within the department or before the Board of Pharmacy upon request of the entity
27 bringing the proceedings, the administrative law judge may direct a licentiate found to have
28 committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable

1 costs of the investigation and enforcement of the case. Nothing in this section shall preclude a
2 board from including the recovery of the costs of investigation and enforcement of a case in any
3 stipulated settlement.

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5 **DRUG DEFINITIONS**

6 13. **Oxycodone**, is a Schedule II controlled substance pursuant to Health and Safety
7 Code Section 11055(b)(1)(M) and a dangerous drug per Business and Professions Code Section
8 4022.

9 14. **Alprazolam**, is a Schedule IV controlled substance pursuant to Health and Safety
10 Code Section 11057(d)(1) and a dangerous drug per Business and Professions Code Section 4022.

11 15. **Temazepam**, is a Schedule IV controlled substance pursuant to Health and Safety
12 Code Section 11057(d)(29) and a dangerous drug per Business and Professions Code Section
13 4022.

14 16. **Oxymorphone**, trade name Opana ER is a Schedule II controlled substance
15 pursuant to Health and Safety Code Section 11055(b)(1)(N) and a dangerous drug per Business
16 and Professions Code Section 4022.

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19 **BACKGROUND FACTS**

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21 17. On or around January 11, 2013, Board Inspectors (Inspectors) performed a routine
22 inspection to examine Respondents prescription documents and records based on reports of large
23 amounts of prescriptions being dispensed for oxycodone 30 mg.

24 18. During the inspection, Inspectors noticed a large amount of prescriptions for
25 controlled substances from 'out of the area' patients and doctors.

26 19. On or around March 18, 2013, Respondents produced, upon request, the following
27 documents:

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- A Drug Utilization Report (DUR) for oxycodone 30 mg.

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- Drug Enforcement Agency (DEA) inventory dated May 1, 2010 showing that Respondent did not have any oxycodone 30 mg (oxy) in stock.
- DEA inventory dated May 1, 2012 showing that Respondent had 1,061 tablets of oxy in stock.
- Purchase records from Anda¹ which showed that during the time period between May 1, 2010 and March 4, 2013 Respondent purchased 2000 tablets of oxy.
- Purchase records from McKesson² which showed that during the time period between May 1, 2010 and April 16, 2012, Respondent purchased 185,100 tablets of oxy.
- Return records of oxy, showing 1,600 returned tablets.

20. The DUR records demonstrated that during the time period between May 1, 2010 and May 2, 2012, Respondents dispensed 188,295 oxy tablets.

21. The purchase and return records showed that during the time period between May 1, 2010 and May 2, 2012, Respondents purchased 185,500 oxy tablets.

22. Based on DUR records, purchase and return records and DEA inventory records showing stock on hand of 1,061 tablets, Respondents failed to account for 1,734 oxy tablets.

23. Respondents also produced, upon request, a CURES report³ and selected Patient Activity Reports (PARS) for the following patients⁴. The PARS contained the following information:

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¹ Anda distributes generic, select brand pharmaceutical products, vaccines, injectables and over-the-counter medicines from more than 200 suppliers to more than 60,000 locations, including independent pharmacies, alternate care providers (hospitals, nursing homes and mail order pharmacies), pharmacy chains and physicians' offices.

² McKesson supplies branded, generic and over-the-counter pharmaceuticals to more than 40,000 customers spanning retail chains, independent retail pharmacies and institutional providers such as hospitals, health systems, integrated delivery networks and long-term care providers.

³ Controlled Substance Utilization Review and Evaluation System (CURES) is designed to identify and deter drug abuse and diversion through accurate and rapid tracking of Schedule II through IV controlled substances. It is a valuable investigative, preventive and educational tool for law enforcement, regulatory boards, educational researchers, and the healthcare community.

⁴ Initials are used to protect confidentiality.

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a. Patient S.A.

Date	Oxy Tablets Received (30 mg)	Rx #	Physician	Location
2/7/11	240	630673	Dr. Garfinkel	Royal Hills
2/9/11	240	800330	Dr. Onubah	Respondent
2/22/11	120	869427	Dr. Lifson	Shalom Pharmacy
3/3/11	240	803651	Dr. Onubah	Respondent
3/20/11	120	873404	Dr. Garfinkel	Royal Hills
4/4/11	240	809644	Dr. Onubah	Respondent

Respondents failed to check the patient profile to discover 8 days early between Rx #800330 and 803651. Respondents also failed to obtain a PAR to discover that S.A. obtained multiple early prescriptions for controlled substances from multiple physicians.

b. Patient W.A.

Date	Tablets Received	Rx #	Physician	Location
2/8/12	60 Alprazolam (.5 mg)	866094	Dr. Makandura	Respondent
2/9/12	60 Alprazolam (.5 mg)	866218	Dr. Makandura	Respondent
6/20/12	30 Temazepam (30 mg)	887926	Dr. Makandura	Respondent
7/11/12	30 Temazepam (30 mg)	887926	Dr. Makandura	Respondent
9/9/12	60 Alprazolam (.5 mg)	905095	Dr. Makandura	Respondent

1	9/20/12	60 Alprazolam (.5 mg)	907047	Dr. Makandura	Respondent
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3 Respondents failed to obtain a PAR to discover that W.A. obtained multiple early
4 prescriptions for controlled substances.

6 c. Patient C.M.

8	Date	Hydrocodone/APAP Tablets Received	Rx #	Physician	Location
9					
10	3/28/12	60	1097892	Dr. Santz	Respondent
11	4/2/12	60	876872	Dr. Santz	Respondent
12	4/15/12	60	879247	Dr. Santz	Respondent
13	5/22/12	60	885852	Dr. Santz	Respondent
14	6/7/12	60	888648	Dr. Santz	Respondent

15 Respondents failed to obtain a PAR to discover that C.M. obtained multiple early
16 prescriptions for controlled substances.

18 d. Patient C.M.

20	Date	OxyContin Tablets Received (80 mg)	Rx #	Physician	Location
21					
22					
23	1/14/11	60	544898	Dr. Hong	CVS Pharmacy
24	1/16/11	60	795254	Dr. Hong	Respondent

25 Respondents failed to obtain a PAR to discover that C.M. obtained an early prescription for
26 controlled substances.

e. Patient R.T.

Date	Tablets Received	Rx #	Physician	Location
7/20/10	60 OxyContin (80 mg)	761507	Dr. Garfinkel	Century Discount Pharmacy
8/3/10	90 OxyContin (80 mg)	766024	Dr. Onubah	Respondent
8/5/11	240 Oxycodone (30 mg)	832146	Dr. Clyde	Respondent
8/31/11	240 Oxycodone	836685	Dr. Clyde	Respondent
1/31/12	180 Oxycodone	864333	Dr. Clyde	Respondent
2/23/12	180 Oxycodone	868670	Dr. Arnold	Respondent

Respondents failed to obtain a PAR to discover that R.T. obtained prescriptions from multiple pharmacies and from multiple doctors during the time period patient was receiving prescriptions from Respondent.

f. Patient A.W.

Date	Tablets Received	Rx #	Physician	Location
1/14/11	240 Oxycodone (30 mg) 20 DS	795027	Dr. Clyde	Respondent
2/14/11	240 Oxycodone (30 mg) 30 DS	801344	Dr. Clyde	Respondent
3/14/11	240 Oxycodone (30 mg) 30 DS	806843	Dr. Clyde	Respondent
4/15/11	240 Oxycodone (30 mg) 20 DS	813054	Dr. Clyde	Respondent

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5/11/11	240 Oxycodone (30 mg) 20 DS	817439	Dr. Clyde	Respondent
6/20/11	240 Oxycodone (30 mg) 20 DS	822752	Dr. Clyde	Respondent
7/7/11	240 Oxycodone (30 mg) 20 DS	827152	Dr. Clyde	Respondent
8/5/11	240 Oxycodone (30 mg) 30 DS	832147	Dr. Clyde	Respondent
8/31/11	240 Oxycodone (30 mg) 30 DS	836684	Dr. Clyde	Respondent
9/29/11	240 Oxycodone (30 mg) 30 DS	842172	Dr. Clyde	Respondent
10/27/11	240 Oxycodone (30 mg) 22 DS	847076	Dr. Clyde	Respondent
11/15/11	180 Oxycodone (30 mg) 30 DS	850380	Dr. Clyde	Respondent
12/8/11	180 Oxycodone (30 mg) 30 DS	854516	Dr. Clyde	Respondent
1/3/12	180 Oxycodone (30 mg) 30 DS	859156	Dr. Clyde	Respondent
1/31/12	180 Oxycodone (30 mg) 30 DS	864334	Dr. Clyde	Respondent
2/23/12	180 Oxycodone (30 mg) 30 DS	868672	Dr. Clyde	Respondent
6/4/12	90 Oxycodone (30 mg) 30 DS	887865	Dr. Alav	Respondent
7/2/12	90 Oxycodone	893060	Dr. Alav	Respondent

1		(30 mg) 30 DS			
2	9/18/12	60 Oxycodone	906170	Dr. Martinez	Respondent
3		(10 mg) 15 DS			
4	10/17/12	90 Oxycodone	911895	Dr. Fok	Respondent
5		(30 mg) 30 DS			
6	11/19/12	90 Oxycodone	917949	Dr. Fok	Respondent
7		(30 mg) 30 DS			
8	12/12/12	90 Oxycodone	921385	Dr. Fok	Respondent
9		(30 mg) 30 DS			
10	1/10/13	90 Oxycodone	926854	Dr. Fok	Respondent
11		(30 mg) 30 DS			
12	2/8/13	90 Oxycodone	933365	Dr. Fok	Respondent
13		(30 mg) 30 DS			
14	3/5/13	90 Oxycodone	938515	Dr. Fok	Respondent
15		(30 mg) 30 DS			
16	4/5/13	90 Oxycodone	944698	Dr. Fok	Respondent
17		(30 mg) 30 DS			
18	5/3/13	90 Oxycodone	950108	Dr. Fok	Respondent
19		(30 mg) 30 DS			

20 Respondents failed to discover the patient's multiple early orders. Respondents also failed
 21 to obtain a PAR to discover that A.W. obtained prescriptions from multiple pharmacies and from
 22 multiple doctors during the time period patient was receiving prescriptions from Respondent.

24 24. On or around 4/14/11, 67 patients came into Respondent pharmacy consecutively, 54
 25 for oxycodone 30 mg and 13 for Opana 40 mg.

26 25. On or around 3/4/11, 23 patients came into Respondent pharmacy consecutively, 11
 27 for oxycodone 30 mg and 12 for Opana 40 mg.

1 26. On or around 3/2/11, 32 patients came into Respondent pharmacy consecutively for
2 oxycodone 30 mg.

3 27. On or around 2/16/11, 13 patients came into Respondent pharmacy consecutively, 10
4 for oxycodone 30 mg and 3 for Opana 40 mg.

5 28. On or around 2/14/11, 11 patients came into Respondent pharmacy consecutively for
6 oxycodone 30 mg.

7 29. On or around 2/8/11, 12 patients came into Respondent pharmacy consecutively, 8 for
8 oxycodone 30 mg and 4 for Opana 40 mg.

9 30. On or around 2/1/11, 44 patients came into Respondent pharmacy consecutively, 43
10 for oxycodone 30 mg and 1 for Opana 40 mg.

11 31. On or around 1/31/11, 10 patients came into Respondent pharmacy consecutively for
12 oxycodone 30 mg.

13 32. On or around 1/5/11, 14 patients came into Respondent pharmacy consecutively, 10
14 for oxycodone 30 mg and 4 for Opana 40 mg.

15 33. On or around 1/4/11, 18 patients came into Respondent pharmacy consecutively for
16 oxycodone 30 mg.

17 34. On or around 1/3/11, 18 patients came into Respondent pharmacy consecutively for
18 oxycodone 30 mg.

19

20

FIRST CAUSE FOR DISCIPLINE

21

(Filling Irregular and Uncertain Prescriptions)

22 35. Respondents Rite Aid 5602 and Vickie Le are subject to disciplinary action under
23 Cal. Code of Regs. Title 16, section 1761, subdivisions (a) – (b), in that Respondents filled
24 prescriptions which contained significant irregularities and uncertainties. Complainant
25 incorporates by reference, paragraphs 17 – 34 above, and all subparagraphs as if fully set forth
26 herein.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 (Failure to Keep Accountability)

3 36. Respondents Rite Aid 5602 and Vickie Le are subject to disciplinary action under
4 Bus. & Prof. Code section 4081, subdivision (a) and Cal. Code of Regs. Title 16, section 1718, in
5 that Respondents failed to account for 1,734 tablets of oxycodone 30 mg. Complainant
6 incorporates by reference, paragraphs 17 – 22 above, and all subparagraphs as if fully set forth
7 herein.

8
9 **THIRD CAUSE FOR DISCIPLINE**

10 (Excessive Furnishing of Controlled Substances)

11 37. Respondents Rite Aid 5602 and Vickie Le are subject to disciplinary action under
12 Bus. & Prof. Code section 4301, subdivision (d) in conjunction with Health and Safety Code
13 sections 11153, subdivision (a), 11055(b)(1)(M), 11057(d)(1), 11057(d)(29) and 11055(b)(1)(N)
14 and Cal. Code of Regs. Title 16, section 1718, in that Respondents excessively furnished
15 controlled substances to patients. Complainant incorporates by reference, paragraphs 17– 34
16 above, and all subparagraphs as if fully set forth herein.

17
18 **DISCIPLINARY CONSIDERATIONS**

19 38. On or around May 10, 2012, Respondents were cited and fined for violating Cal.
20 Code of Regs., Title 16 section 1764[unauthorized disclosure of prescription and medical
21 information] and 1761[compounding or dispensing any prescription, which contains significant
22 errors or omissions]. The underlying circumstances are that on or around November 7, 2010,
23 Respondents filled three (3) prescriptions for APAP/Codeine #3, potassium penicillin vk 500 mg,
24 and ibuprofen 800 mg for patient J.S. and three (3) prescriptions for diphenhydramine 25 mg,
25 prednisone 20 mg and famotidine 20 mg for patient O.H., but Respondents sold to J.S.'s mother,
26 the three prescriptions labeled for patient O.H. instead of the three (3) prescriptions intended for
27 J.S.

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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 issue a decision:

1. Revoking or suspending Pharmacist License Number RPH 45667 issued to Vickie Le;

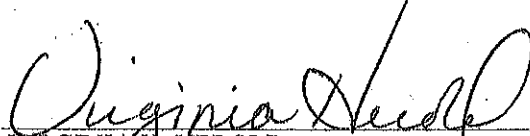
2. Revoking or suspending Pharmacy Permit Number PHY 42511, issued to Rite Aid 5602;

3. Ordering Rite Aid 5602 and Vickie Le, Pharmacist-in-Charge, to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED:

1/17/15



VIRGINIA K. HEROLD
Executive Officer
California State Board of Pharmacy
State of California
Complainant

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