

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

In the Matter of the Accusation Against:

**THANH TAM PHARMACY, INC.
DBA PACIFIC PHARMACY
9898 Bolsa Avenue
Westminster, CA 92683**

Pharmacy Permit No. PHY 50504

and

LINDA OANH NGUYEN

and

CAN VINH VOUNG

Respondents.

Case No. 4971

OAH No. 2014100518

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
THANH TAM PHARMACY, INC.,
DBA, PACIFIC PHARMACY ONLY**

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 4, 2015.

It is so ORDERED on August 5, 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 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
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9 *Attorneys for Complainant*

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

13 In the Matter of the Accusation Against:

14 **THANH TAM PHARMACY, INC.,**
15 **DBA PACIFIC PHARMACY**
16 **9898 Bolsa Avenue**
Westminster, CA 92683

17 **Pharmacy Permit No. PHY 50504**

18 **LINDA OANH NGUYEN**
19 **9246 Gardenia Avenue**
Fountain Valley, CA 92708

20 **Pharmacist License No. RPH 92708**

21 **CAN VINH VOUNG**
22 **12081 Jennifer Lane**
Garden Grove, CA 92640

23 **Pharmacist License No. RPH 44286**

24 Respondents.

Case No. 4971

OAH No. 2014100518

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
THANH TAM PHARMACY, INC.,
DBA, PACIFIC PHARMACY ONLY

25
26 In the interest of a prompt and speedy settlement of this matter, consistent with the public
27 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,
28 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will

1 be submitted to the Board for approval and adoption as the final disposition of the Accusation
2 solely with respect to Thanh Tam Pharmacy, Inc., doing business as, Pacific Pharmacy.

3 PARTIES

4 1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy.
5 She brought this action solely in her official capacity and is represented in this matter by Kamala
6 D. Harris, Attorney General of the State of California, by Ron Espinoza and Desiree I. Kellogg,
7 Deputy Attorneys General.

8 2. Thanh Tam Pharmacy, Inc., doing business as, Pacific Pharmacy ("Respondent") are
9 represented in this proceeding by attorney Herbert L. Weinberg of Fenton Law Group, LLP
10 whose address is: 1990 S. Bundy Drive, Suite 777, Los Angeles, CA 90025.

11 3. On or about January 24, 2011, the Board of Pharmacy issued Pharmacy Permit No.
12 PHY 50504 to Respondent. The Pharmacy Permit was in full force and effect at all times
13 relevant to the charges brought in Accusation No. 4971 and will expire on January 1, 2016, unless
14 renewed.

15 JURISDICTION

16 4. Accusation No. 4971 was filed before the Board of Pharmacy ("Board"), Department
17 of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
18 statutorily required documents were properly served on Respondent on or about September 3,
19 2014. Respondent timely filed its Notice of Defense contesting the Accusation.

20 5. A copy of Accusation No. 4971 is attached as Exhibit A and incorporated herein by
21 reference.

22 ADVISEMENT AND WAIVERS

23 6. Respondent has carefully read, fully discussed with counsel, and understands the
24 charges and allegations in Accusation No. 4971. Respondent has also carefully read, fully
25 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
26 Order.

27 7. Respondent is fully aware of Respondent's legal rights in this matter, including the
28 right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-

1 examine the witnesses against it; the right to present evidence and to testify on its own behalf; the
2 right to the issuance of subpoenas to compel the attendance of witnesses and the production of
3 documents; the right to reconsideration and court review of an adverse decision; and all other
4 rights accorded by the California Administrative Procedure Act and other applicable laws.

5 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
6 every right set forth above.

7 CULPABILITY

8 9. Respondent understands and agrees that the charges and allegations in Accusation
9 No. 4971, if proven at a hearing, constitute cause for imposing discipline upon its Pharmacy
10 Permit.

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

15 11. Respondent agrees that its Pharmacy Permit is subject to discipline and it agrees to be
16 bound by the Board's probationary terms as set forth in the Disciplinary Order below.

17 CONTINGENCY

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

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

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

10 15. In consideration of the foregoing admissions and stipulations, the parties agree that
11 the Board may, without further notice or formal proceeding, issue and enter the following
12 Disciplinary Order:

13 **DISCIPLINARY ORDER**

14 IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 50504 issued to Respondent
15 Thanh Tam Pharmacy, Inc., doing business as, Pacific Pharmacy, is revoked. However, the
16 revocation is stayed and Respondent is placed on probation for five (5) years on the following
17 terms and conditions.

18 1. **Obey All Laws**

19 Respondent owner shall obey all state and federal laws and regulations.

20 Respondent owner shall report any of the following occurrences to the Board, in writing,
21 within seventy-two (72) hours of such occurrence:

- 22 ■ an arrest or issuance of a criminal complaint for violation of any provision of the
23 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
24 substances laws
- 25 ■ a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
26 criminal complaint, information or indictment
- 27 ■ a conviction of any crime
- 28 ■ discipline, citation, or other administrative action filed by any state or federal agency

1 which involves Respondent's pharmacy license/permit or which is related to the
2 practice of pharmacy or the manufacturing, obtaining, handling or distributing,
3 billing, or charging for any drug, device or controlled substance.

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

5 **2. Report to the Board**

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

14 **3. Interview with the Board**

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

20 **4. Cooperate with Board Staff**

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

24 **5. Reimbursement of Board Costs**

25 As a condition precedent to successful completion of probation, respondent owner shall pay
26 to the Board its costs of investigation and prosecution in the amount of \$18,502.34. Respondent
27 owner shall make said payments in a payment plan to be approved by the board. There shall be
28 no deviation from this schedule absent prior written approval by the Board or its designee.

1 Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

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

4 **6. Probation Monitoring Costs**

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

9 **7. Status of License**

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

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

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

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

26 Upon acceptance of the surrender, respondent owner shall relinquish the premises wall and
27 renewal license to the Board within ten (10) days of notification by the Board that the surrender is
28 accepted. Respondent owner shall further submit a completed Discontinuance of Business form

1 according to Board guidelines and shall notify the Board of the records inventory transfer.

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

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

15 Respondent owner further stipulates that he or she shall reimburse the Board for its costs of
16 investigation and prosecution prior to the acceptance of the surrender.

17 **9. Notice to Employees**

18 Respondent owner shall, upon or before the effective date of this decision, ensure that all
19 employees involved in permit operations are made aware of all the terms and conditions of
20 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.
21 If the notice required by this provision is posted, it shall be posted in a prominent place and shall
22 remain posted throughout the probation period. Respondent owner shall ensure that any
23 employees hired or used after the effective date of this decision are made aware of the terms and
24 conditions of probation by posting a notice, circulating a notice, or both. Additionally,
25 respondent owner shall submit written notification to the Board, within fifteen (15) days of the
26 effective date of this decision, that this term has been satisfied. Failure to submit such
27 notification to the Board shall be considered a violation of probation.

28 "Employees" as used in this provision includes all full-time, part-time, volunteer,

1 temporary and relief employees and independent contractors employed or hired at
2 any time during probation.

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

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

10 **11. Posted Notice of Probation**

11 Respondent owner shall prominently post a probation notice provided by the Board in a
12 place conspicuous and readable to the public. The probation notice shall remain posted during
13 the entire period of probation.

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

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

19 **12. Violation of Probation**

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

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

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

4 **13. Completion of Probation**

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

7 **14. Community Services Program**

8 Within sixty (60) days of the effective date of this decision, respondent owner shall submit
9 to the Board or its designee, for prior approval, a community service program in which
10 respondent shall provide free health-care related goods or services on a regular basis to a
11 community or charitable facility or agency having a total value of \$20,000.00. The value of
12 goods and services donated to this program will be determined as follows: services at actual
13 payroll amounts, and goods at retail value.

14 This total value must be met within the first four (4) years of probation. Examples of
15 goods and services that may be provided to constitute this value include sharps disposal
16 containers, mail-back containers, immunizations, and other similar community/charitable goods
17 and services. Within thirty (30) days of board approval thereof, respondent shall submit
18 documentation to the board demonstrating commencement of the community service program.
19 Respondent shall report on progress with the community service program in the quarterly reports.
20 Failure to timely submit, commence, or comply with the program shall be considered a violation
21 of probation.

22 **15. Separate File of Records**

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

26 **16. Report of Controlled Substances**

27 Respondent shall submit quarterly reports to the board detailing the total acquisition and
28 disposition of such controlled substances as the board may direct. Respondent shall specify the

1 manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g., from a
2 manufacturer, from another retailer, etc.) of such controlled substances. Respondent shall report
3 on a quarterly basis or as directed by the board. The report shall be delivered or mailed to the
4 board no later than ten (10) days following the end of the reporting period. Failure to timely
5 prepare or submit such reports shall be considered a violation of probation.

6 **17. No Dispensing of Promethazine with Codeine**

7 For the first four (4) years of probation, Respondent shall not dispense promethazine
8 with codeine.

9 **18. Designation of New Pharmacist in Charge**

10 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
11 board or its designee in writing the name and license number of a pharmacist for which approval
12 of the board or its designee is sought for that pharmacist to serve as pharmacist in charge for
13 respondent.

14 The board or its designee shall have discretion whether to approve or deny the designated
15 pharmacist in charge. Respondent may not operate as a pharmacy without a pharmacist in charge
16 approved by the board or its designee, and failure to secure approval of a designated pharmacist
17 in charge shall result in a further suspension of the pharmacy's operations until such time as a
18 pharmacist in charge is approved and respondent is informed by the board or its designee that it
19 may resume pharmacy operations.

20 Failure to timely seek approval of, designate, or ensure pharmacy supervision by a new
21 pharmacist in charge shall be considered a violation of probation.

22 **19. Pharmacy Consultant**

23 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
24 board or its designee, for prior approval, the name and license number of a pharmacist who is an
25 expert in prescription drug abuse that shall then be retained by the pharmacy at its own expense as
26 an independent consultant responsible for reviewing pharmacy operations on a monthly basis
27 during the period of probation for compliance by respondent with state and federal laws and
28 regulations governing the practice of pharmacy. The consultant shall be a pharmacist licensed by

1 and not on probation with the board. Respondent shall be responsible for ensuring that the
2 consultant submits timely reports. After twelve monthly reports have been submitted timely,
3 respondent may request that the board or its designee approve transition to quarterly review and
4 reporting by the consultant. Approval or denial of such transition shall be within the discretion of
5 the board or its designee.

6 If an approved consultant is no longer able or willing to serve as a consultant for
7 respondent, respondent shall seek approval of a new consultant within thirty (30) days, and to
8 ensure timely reporting by the newly-approved consultant. Respondent may not operate as a
9 pharmacy without a consultant approved by the board or its designee, and failure to secure
10 approval of a consultant shall result in a further suspension of the pharmacy's operations until
11 such time as a consultant is approved and respondent is informed by the board or its designee that
12 it may resume pharmacy operations.

13 Failure to timely seek approval of, retain, or ensure timely reporting by the consultant shall
14 be considered a violation of probation.

15 **20. Prerequisites to Dispensing Controlled Substances**

16 Respondent and its employees, contractors, and agents shall not dispense or furnish any
17 controlled substances until the pharmacy is notified in writing by the board or its designee that
18 two prerequisites to doing so have been satisfied:

19 (1) All pharmacists that perform any dispensing or furnishing in, for, or from respondent,
20 including any full-time, part-time, volunteer, temporary or relief employees or independent
21 contractors employed or hired at any time during probation, have taken all steps necessary
22 for registration with the California Prescription Drug Monitoring Program (PDMP), aka
23 CURES;

24 (2) The board or its designee have approved written pharmacy policies and procedures
25 relating to dispensing or furnishing controlled substances submitted by the pharmacy; and

26 (3) All pharmacists that perform any dispensing or furnishing in, for, or from respondent,
27 including a full-time, part-time, volunteer, temporary or relief employees or independent
28 contractors employed or hired during probation, have taken six (6) hours of remedial

1 education in prescription drug abuse in a course preapproved by the board with proof of
2 compliance submitted to the board.

3 Dispensing or furnishing of controlled substances by respondent or its employee, contractor, or
4 agent without satisfying these prerequisites and receiving notification from the board or its
5 designee that dispensing or furnishing is permitted shall be considered a violation of probation.

6 21. Civil Penalty

7 Respondent shall pay to the Board a civil penalty of \$25,000.00 within ninety (90) days of
8 the effective date of the decision.

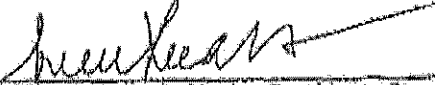
9 Respondent understands and agrees that this civil penalty is an administrative fine as
10 defined in 11 U.S.C. § 523(a)(7), and is non-dischargeable in bankruptcy. The filing of
11 bankruptcy by respondent shall not relieve respondent of the obligation to pay the civil penalty.

12 Failure to timely pay this civil penalty shall be considered a violation of probation. Further,
13 absent prior written approval by the board or its designee, respondent may not successfully
14 complete probation until this amount is paid in full.

15 ACCEPTANCE

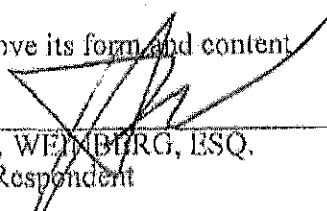
16 I am authorized to sign for Respondent Thanh Tam Pharmacy, doing business as Pacific
17 Pharmacy. I have carefully read the above Stipulated Settlement and Disciplinary Order and have
18 fully discussed it with my attorney, Herbert L. Weinberg. I understand the stipulation and the
19 effect it will have on Respondent's Pharmacy Permit. I enter into this Stipulated Settlement and
20 Disciplinary Order voluntarily, knowingly, and intelligently, and agree that Respondent be bound
21 by the Decision and Order of the Board of Pharmacy.

22
23 DATED: 06/25/2015


24 XIJIAN TRIJU, on behalf of and as President of,
25 THANH TAM PHARMACY, INC.
26 DBA, PACIFIC PHARMACY
27 Respondent
28

1 I have read and fully discussed with Respondent Thanh Tam Pharmacy, dba Pacific
2 Pharmacy and Xuan Trieu the terms and conditions and other matters contained in the above
3 Stipulated Settlement and Disciplinary Order. I approve its form and content

4 DATED: 6/25/2015


HERBERT L. WEINBERG, ESQ.
Attorney for Respondent

6
7 ENDORSEMENT

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

10 DATED: 6/26/15

Respectfully submitted,

11 KAMALA D. HARRIS
12 Attorney General of California
13 GREGORY J. SALUTE
14 Supervising Deputy Attorney General

15 ~~DEBBIE L. KELLOGG~~
16 Deputy Attorney General
17 *Attorneys for Complainant*
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Exhibit A

Accusation No. 4971

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
Deputy Attorney General
4 State Bar No. 126461
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6 San Diego, CA 92186-5266
Telephone: (619) 645-2996
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:

Case No. 4971

12 **THANH TAM PHARMACY, INC.,**
13 **DBA PACIFIC PHARMACY**
9898 Bolsa Avenue
14 Westminster, CA 92683

ACCUSATION

15 Pharmacy Permit No. PHY 50504

16 **LINDA OANH NGUYEN**
9246 Gardenia Avenue
17 Fountain Valley, CA 92708

18 Pharmacist License No. RPH 92708

19 **CAN VINH YOUNG**
12081 Jennifer Lane
20 Garden Grove, CA 92640

21 Pharmacist License No. RPH 44286

22 Respondents.

1 Complainant alleges:

2 **PARTIES**

3 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
4 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

5 2. On or about October 21, 2009, the Board issued Pharmacy Permit Number PHY
6 48979 to Thanh Tam Pharmacy, Inc., dba Pacific Pharmacy with Kimdzung Nguyen designated as
7 the Pharmacist-in-Charge. On or about January 24, 2011, there was a change in ownership of that
8 pharmacy which resulted in the Board issuing Pharmacy Permit Number PHY 50504 to Thanh
9 Tam Pharmacy, Inc., dba Pacific Pharmacy (Respondent Pacific Pharmacy). The Pharmacy
10 Permit was in full force and effect at all times relevant to the charges brought herein and will
11 expire on January 1, 2015, unless renewed.

12 3. On or about March 8, 1996, the Board of Pharmacy issued Pharmacist License
13 Number RPH 48563 to Linda Oanh Nguyen (Respondent Linda Nguyen). The Pharmacist
14 License was in full force and effect at all times relevant to the charges brought herein and will
15 expire on August 31, 2015, unless renewed.

16 4. On or about June 21, 1991, the Board of Pharmacy issued Pharmacist License
17 Number RPH 44286 to Can Vinh Voung (Respondent Can Vuong). The Pharmacist License was
18 in full force and effect at all times relevant to the charges brought herein and will expire on June
19 30, 2015, unless renewed.

20 **JURISDICTION**

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

24 6. Section 4011 of the Code provides that the Board shall administer and enforce both
25 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
26 Act [Health & Safety Code, § 11000 et seq.].

27 7. Section 4300(a) of the Code provides that every license issued by the Board may be
28 suspended or revoked.

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8. Section 4300.1 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

STATUTORY AND REGULATORY PROVISIONS

9. Section 4301 of the Code states in pertinent part:

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:

...
(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 any other state or federal regulatory agency.

...
(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board.

10. Section 4113(c) of the Code states:

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

11. Section 4125(a) of the Code states:

Every pharmacy shall establish a quality assurance program that shall, at a minimum, document medication errors attributable, in whole or part, to the pharmacy or its personnel. The purpose of the quality assurance program shall be to assess errors that occur in the pharmacy in dispensing or furnishing prescription medications so that the pharmacy may take appropriate action to prevent a recurrence.

12. Section 4306.5 of the Code states, in pertinent part:

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

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

6 Acts or omissions that involve, in whole or in part, the failure to consult
7 appropriate patient, prescription, and other records pertaining to the performance of
8 any pharmacy function.

9 ...
10 13. Health and Safety Code section 11153(a) states:

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

23 ...
24 14. Health and Safety Code section 11165(d) states, in pertinent part:

25 To assist law enforcement and regulatory agencies in their efforts to control the
26 diversion and resultant abuse of Schedule II, Schedule III, and Schedule IV controlled
27 substances, and for statistical analysis, education, and research, the Department of
28 Justice shall, contingent upon the availability of adequate funds from the Contingent
Fund of the Medical Board of California, the Pharmacy Board Contingent Fund, the
State Dentistry Fund, the Board of Registered Nursing Fund, and the Osteopathic
Medical Board of California Contingent Fund, maintain the Controlled Substance
Utilization Review and Evaluation System (CURES) for the electronic monitoring of,
and Internet access to information regarding, the prescribing and dispensing of
Schedule II, Schedule III and Schedule IV controlled substances by all practitioners
authorized to prescribe or dispense these controlled substances.

29 ...
30 For each prescription for a Schedule II, Schedule III, or Schedule IV controlled
31 substance, as defined in the controlled substances schedule in federal law and
32 regulations, specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of
33 Title 21 of the Code of Federal Regulations, the dispensing pharmacy or clinic shall
34 provide the following information to the Department of Justice on a weekly basis and
35 in a format specified by the Department of Justice:

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15. Section 1715(a) of title 16, California Code of Regulations states:

The pharmacist-in-charge of each pharmacy as defined under section 4029 or section 4037 of the Business and Professions Code shall complete a self-assessment of the pharmacy's compliance with federal and state pharmacy law. The assessment shall be performed before July 1 of every odd-numbered year. The primary purpose of the self-assessment is to promote compliance through self-examination and education.

16. Section 1761 of title 16, California Code of Regulations states:

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

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

17. Section 1707.3 of title 16, California Code of Regulations states:

Prior to consultation as set forth in section 1707.2, a pharmacist shall review a patient's drug therapy and medication record before each prescription drug is delivered. The review shall include screening for severe potential drug therapy problems.

18. Section 1304.04 of title 21, Code of Federal Regulations states in pertinent part:

(f) Each registered manufacturer, distributor, importer, exporter, narcotic treatment program and compounder for narcotic treatment program shall maintain inventories and records of controlled substances as follows:

...

Inventories and records of controlled substances listed in Schedules III, IV and V shall be maintained either separately from all other records of the registrant or in such form that the information required is readily retrievable from the ordinary business records of the registrant.

...

19. Section 1304.11(a) of title 21, Code of Federal Regulations states:

General requirements. Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date the inventory is taken, and shall be maintained in written, typewritten, or printed form at the registered location. An inventory taken by use of an oral recording device must be promptly transcribed. Controlled substances shall be deemed to be "on hand" if they are in the possession of or under the control of the registrant, including substances returned by a customer, ordered by a customer but not yet invoiced, stored in a warehouse on behalf of the registrant, and substances in the possession of employees or the registrant and

1 intended for distribution as complimentary samples. A separate inventory shall be
2 made for each registered location and each independent activity registered, except as
3 provided in paragraph (e)(4) of this section. In the event controlled substance is in the
4 possession or under the control of the registrant are stored at a location of which
5 he/she is not registered, the substances shall be included in the inventory of the
6 registered location to which they are subject to control or to which the person
7 possessing the substance is responsible. The inventory may be taken either as of
8 opening of business or as of the close of business on the inventory date and it shall be
9 indicated on the inventory.

7 COST RECOVERY

8 20. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation or violations of
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case.

12 DRUG

13 21. Phenergan with Codeine is the brand name for promethazine with codeine, a Schedule
14 V controlled substance pursuant to Health and Safety Code section 111058(c)(1) and is a
15 dangerous drug pursuant to Business and Professions Code section 4022.

16 FACTUAL ALLEGATIONS

17 22. From March 26, 2011 through May 26, 2012, Respondent Linda Nguyen was the
18 Pharmacist-in-Charge (PIC) of Respondent Pacific Pharmacy. From July 1, 2012 and at all times
19 thereafter, Respondent Can Vuong was the PIC of Respondent Pacific Pharmacy.

20 23. In 2011, Respondents Pacific Pharmacy and Linda Nguyen co-mingled records and
21 inventories for Schedule III, Schedule IV and Schedule V controlled substances with the records
22 for other dangerous drugs.

23 24. In 2013, Respondents Pacific Pharmacy and Can Vuong did not fully complete a self-
24 assessment detailing Respondent Pacific Pharmacy's compliance with federal and state pharmacy
25 law. Respondent Pacific Pharmacy and Can Vuong also did not have a quality assurance program
26 which documented and assessed medication errors to determine the cause and to make an
27 appropriate response. Respondent Can Vuong admitted to the Board inspector that they had
28 failed to implement this program.

1 25. From 2011 through 2013, Respondents did not provide any information for each
2 prescription dispensed for a Schedule II, Schedule III or Schedule IV controlled substance to the
3 Department of Justice on a weekly basis for inclusion in the Controlled Substance Utilization
4 Review and Evaluation System ("CURES").

5 26. On or about September 19, 2012, Respondents Pacific Pharmacy and Can Vuong did
6 not accurately document their biennial inventory of the pharmacy's controlled substances in that
7 they did not indicate if the inventory was taken at the opening or close of business on the
8 inventory date.

9 27. In 2013, Respondents Pacific Pharmacy and Can Vuong did not provide requested
10 records to the Board on multiple occasions, including patient profiles and physician profiles or
11 only provided incomplete records.

12 28. Respondents carried only the generic promethazine with codeine which tastes better
13 than other brands, and ordered promethazine with codeine from multiple wholesalers. The
14 volume of promethazine with codeine dispensed by Respondents was much higher than the
15 volume dispensed from neighboring pharmacies.

16 29. From March 26, 2011 to June 6, 2011, Respondents Pacific Pharmacy and Linda
17 Nguyen dispensed 308 prescriptions for approximately 308 pints (145,684mls) of promethazine
18 with codeine after the receipt of prescriptions issued by Dr. T.R., who subsequently surrendered
19 his DEA registration on July 8, 2011 for cause.

20 30. Patients with prescriptions ordered by Dr. T.R., paid for the above-referenced
21 prescriptions in cash, without seeking reimbursement from their insurance carriers. Most of the
22 prescriptions had the patient's names handwritten on the back of the prescriptions. The majority
23 of these prescriptions were written for the same large quantity (one pint) with the same directions
24 for use (one teaspoon, four times a day) and the same estimated days' supply (twenty four). The
25 patients' residences were located far away from Dr. T.R.'s office and an average of twenty six
26 miles from Respondent Pacific Pharmacy. Patients received prescriptions from Dr. T.R. for the
27 same duplicative drug therapy, promethazine with codeine, during successive months.

28

1 Respondents Pacific Pharmacy and Linda Nguyen did not contact Dr. T.R. or review CURES
2 prior to filling the prescriptions.

3 31. From January 24, 2012 through May 13, 2013, Respondents Pacific Pharmacy and
4 Can Vuong or Linda Nguyen dispensed 299 prescriptions of approximately 141,328mls of
5 promethazine with codeine after the receipt of prescriptions issued by Dr. H.S. or his physician
6 assistant, H.T.M. Some of these patients were former patients of Dr. T.R. Patients received
7 prescriptions for duplicative drug therapies consisting of promethazine with codeine and
8 antibiotics during successive months.

9 32. Patients paid for the above-referenced prescriptions in cash ordered by Dr. H.S. or his
10 physician assistant, H.T.M, without seeking reimbursement from their insurance carriers. The
11 patients' residences were located far away from Dr. H.S. or his physician assistant, H.T.M.'s
12 office and an average of twenty eight miles away from Respondent Pacific Pharmacy.

13 Respondents Pacific Pharmacy and Can Vuong did not contact Dr. H.S. or his physician assistant,
14 H.T.M. or review CURES prior to filling the prescriptions.

15 FIRST CAUSE FOR DISCIPLINE

16 (Failure to Report Dispensing of Controlled Prescriptions to CURES against Respondents)

17 33. Respondents are subject to disciplinary action under Code section 4301(j), for
18 violating Health and Safety Code section 11165(d), in that they failed to provide any information
19 for each prescription dispensed of a Schedule II, Schedule III or Schedule IV controlled substance
20 to the Department of Justice on a weekly basis for inclusion in CURES, as set forth in paragraphs
21 22 through 32 above, which are incorporated herein by reference.

22 SECOND CAUSE FOR DISCIPLINE

23 (Failure to Properly Conduct Biennial Inventory of Controlled Substances against

24 Respondent Pacific Pharmacy and Can Vuong)

25 34. Respondents Pacific Pharmacy and Can Vuong are subject to disciplinary action
26 under Code section 4301(o), for violating title 21, Code of Federal Regulations, section
27 1304.11(a), in that they failed to indicate whether the biennial inventory of controlled substances
28

1 conducted on September 19, 2012, had been done at either the opening or closing of business, as
2 set forth in paragraphs 22 through 32 above, which are incorporated herein by reference.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Failure to Complete a Self-Assessment of Compliance with Federal and State Pharmacy
5 Law against Respondents Pacific Pharmacy and Can Vuong)**

6 35. Respondents Pacific Pharmacy and Can Vuong are subject to disciplinary action
7 under Code section 4301(o), for violating title 16, California Code of Regulations, section
8 1715(a) in that they failed to have or fully complete a self-assessment of Respondent Pacific
9 Pharmacy's compliance with federal and state pharmacy laws, as set forth in paragraphs 22
10 through 32 above, which are incorporated herein by reference.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Failure to Institute a Quality Assurance Program against Respondents Pacific Pharmacy
13 and Can Vuong)**

14 36. Respondents Pacific Pharmacy and Can Vuong are subject to disciplinary action
15 under Code section 4301(o), for violating Business and Professions Code section 4125(a), in that
16 they failed to institute a quality assurance program designed to assess medication errors, as set
17 forth in paragraphs 22 through 32 above, which are incorporated herein by reference.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Failure to Maintain Segregated Records of Controlled Substances against Respondents
20 Pacific Pharmacy and Linda Nguyen)**

21 37. Respondents Pacific Pharmacy and Linda Nguyen are subject to disciplinary action
22 under Code section 4301(o), for violating title 21, Code of Federal Regulations, section 1304.4(f),
23 in that they co-mingled the inventories and records for Schedule III, Schedule IV and Schedule V
24 controlled substances with the records for other dangerous drugs, as set forth in paragraphs 22
25 through 32 above, which are incorporated herein by reference.

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SIXTH CAUSE FOR DISCIPLINE

(Subverting Investigation of Board against Respondent Pacific Pharmacy and Can Vuong)

38. Respondents Pacific Pharmacy and Can Vuong are subject to disciplinary action under Code section 4301(q), for unprofessional conduct in that they subverted an investigation of the Board by failing to produce requested records in a timely manner, produced incomplete records or did not produce the requested records at all, as set forth in paragraphs 22 through 32 above, which are incorporated herein by reference.

SEVENTH CAUSE FOR DISCIPLINE

(Failing to Comply with Corresponding Responsibility

for Legitimate Controlled Substance Prescriptions against Respondents)

39. Respondents are subject to disciplinary action under Code section 4301(j), for violating Health and Safety Code section 11153(a), in that they failed to comply with their corresponding responsibility to ensure that controlled substances were dispensed for a legitimate medical purpose when Respondents furnished prescriptions for controlled substances even though "red flags" were present, as set forth in paragraphs 22 through 32 above, which are incorporated herein by reference.

EIGHTH CAUSE FOR DISCIPLINE

(Dispensing Controlled Substance Prescriptions with Significant Errors, Omissions,

Irregularities, Uncertainties, Ambiguities or Alterations against Respondents)

40. Respondents are subject to disciplinary action under Code section 4301(o), for violating title 16, California Code of Regulations, sections 1761(a) and (b) in that they dispensed prescriptions for a controlled substance, promethazine with codeine, which contained significant errors, omissions, irregularities, uncertainties, ambiguities or alterations, as set forth in paragraphs 22 through 32 above, which are incorporated herein by reference.

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NINTH CAUSE FOR DISCIPLINE

**(Failure to Review Patients' Medication Record Before Prescription Drugs Delivered
against Respondents)**

41. Respondents are subject to disciplinary action under Code section 4301(o), for violating title 16, California Code of Regulations, section 1707.3, in that they dispensed prescriptions for drugs, without review of patients' medication records before each prescription drug was delivered. Such a review would have revealed numerous "red flags," as set forth in paragraphs 22 through 32 above, which are incorporated herein by reference.

TENTH CAUSE FOR DISCIPLINE

**(Failure to Exercise or Implement Best Professional Judgment or Corresponding
Responsibility when Dispensing Controlled Substances
against Respondents Linda Nguyen and Can Vuong)**

42. Respondents Linda Nguyen and Can Vuong are subject to disciplinary action under Code section 4301(o), for violating Business and Professions Code section 4306.5(a) and (b), in that they failed to exercise or implement his or her best professional judgment or corresponding responsibility when dispensing controlled substances, as set forth in paragraphs 22 through 32 above, which are incorporated herein by reference.

ELEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct against Respondents Linda Nguyen and Can Vuong)

43. Respondents are subject to disciplinary action under Code section 4301 for unprofessional conduct in that they engaged in the activities described in paragraphs 22 through 32 above, which are incorporated herein by reference.

PRAYER

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

1. Revoking or suspending Pharmacy Permit Number PHY 50504, issued to Thanh Tam Pharmacy, Inc. dba Pacific Pharmacy;

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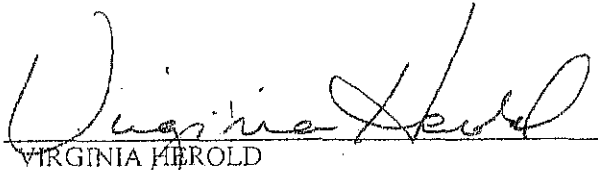
2. Revoking or suspending Pharmacist License Number RPH 48563, issued to Linda Oanh Nguyen;

3. Revoking or suspending Pharmacist License Number RPH 44286, issued to Can Vinh Vuong;

4. Ordering Thanh Tam Pharmacy, Inc., Linda Oanh Nguyen and Can Vinh Vuong 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;

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

DATED: 8/27/14



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

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