

**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**

and

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

Pharmacist License No. RPH 48563

and

CAN VINH VOUNG

Respondents.

Case No. 4971

OAH No. 2014100518

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
LINDA OANH NGUYEN 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
Deputy Attorney General
4 State Bar No. 126461
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
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**
14 **9898 Bolsa Avenue**
Westminster, CA 92683

OAH No. 2014100518

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO LINDA
OANH NGUYEN ONLY

15 **Pharmacy Permit No. PHY 50504**

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

18 **Pharmacist License No. RPH 48563**

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

21 **Pharmacist License No. RPH 44286**

22 Respondents.

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24
25 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
26 entitled proceedings that the following matters are true:
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1 PARTIES

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

6 2. Respondent Linda Oanh Nguyen ("Respondent") is represented in this proceeding by
7 attorney Adam B. Brown of Brown & Brown, whose address is: 3848 W. Carson Street, Suite
8 206, Torrance, California 90503.

9 3. On or about March 8, 1996, the Board of Pharmacy issued Pharmacist License No.
10 RPH 48563 to Linda Oanh Nguyen (Respondent). The Pharmacist License was in full force and
11 effect at all times relevant to the charges brought in Accusation No. 4971 and will expire on
12 August 31, 2015, unless renewed.

13 JURISDICTION

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

18 5. A copy of Accusation No. 4971 is attached as exhibit A and incorporated herein by
19 reference.

20 ADVISEMENT AND WAIVERS

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

25 7. Respondent is fully aware of her legal rights in this matter, including the right to a
26 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
27 the witnesses against her; the right to present evidence and to testify on her own behalf; the right
28 to the issuance of subpoenas to compel the attendance of witnesses and the production of

1 documents; the right to reconsideration and court review of an adverse decision; and all other
2 rights accorded by the California Administrative Procedure Act and other applicable laws.

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

5 CULPABILITY

6 9. Respondent admits the truth of each and every charge and allegation in Accusation
7 No. 4971.

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

10 CONTINGENCY

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

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

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

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

4 **DISCIPLINARY ORDER**

5 IT IS HEREBY ORDERED that Pharmacist License No. RPH 48563 issued to Respondent
6 Linda Oanh Nguyen (Respondent) is revoked. However, the revocation is stayed and Respondent
7 is placed on probation for five (5) years on the following terms and conditions.

8 **1. Suspension**

9 As part of probation, respondent is suspended from the practice of pharmacy for 15 days
10 beginning the effective date of this decision.

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

19 Respondent shall not engage in any activity that requires the professional judgment of a
20 pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy.

21 Respondent shall not perform the duties of a pharmacy technician or a designated representative
22 for any entity licensed by the board.

23 Subject to the above restrictions, respondent may continue to own or hold an interest in any
24 licensed premises in which she holds an interest at the time this decision becomes effective unless
25 otherwise specified in this order.

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

27 **2. Obey All Laws**

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

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

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

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

14 3. Report to the Board

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

23 4. Interview with the Board

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

1 5. **Cooperate with Board Staff**

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

5 6. **Continuing Education**

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

8 7. **Notice to Employers**

9 During the period of probation, respondent shall notify all present and prospective
10 employers of the decision in case number 4971 and the terms, conditions and restrictions imposed
11 on respondent by the decision, as follows:

12 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
13 respondent undertaking any new employment, respondent shall cause her direct supervisor,
14 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
15 tenure of employment) and owner to report to the board in writing acknowledging that the listed
16 individual(s) has/have read the decision in case number 4971, and terms and conditions imposed
17 thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s)
18 submit timely acknowledgment(s) to the board.

19 If respondent works for or is employed by or through a pharmacy employment service,
20 respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every entity
21 licensed by the board of the terms and conditions of the decision in case number 4971 in advance
22 of the respondent commencing work at each licensed entity. A record of this notification must be
23 provided to the board upon request.

24 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
25 (15) days of respondent undertaking any new employment by or through a pharmacy employment
26 service, respondent shall cause her direct supervisor with the pharmacy employment service to
27 report to the board in writing acknowledging that she has read the decision in case number 4971
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1 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
2 that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

10 **8. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC),**
11 **Serving as Designated Representative-in-Charge, or Serving as a Consultant**

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

16 **9. Reimbursement of Board Costs**

17 As a condition precedent to successful completion of probation, respondent shall pay to the
18 board its costs of investigation and prosecution in the amount of \$8,570.16. Respondent shall
19 make said payments in a payment plan to be approved by the board.

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

23 The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to
24 reimburse the board its costs of investigation and prosecution.

25 **10. Probation Monitoring Costs**

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

3 **11. Status of License**

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

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

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

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

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

25 **13. Notification of a Change in Name, Residence Address, Mailing**
26 **Address or Employment**

27 Respondent shall notify the board in writing within ten (10) days of any change of
28 employment. Said notification shall include the reasons for leaving, the address of the new

1 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
2 shall further notify the board in writing within ten (10) days of a change in name, residence
3 address, mailing address, or phone number.

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

6 14. Tolling of Probation

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

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

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

21 "Cessation of practice" means any calendar month during which respondent is
22 not practicing as a pharmacist for at least 40 hours, as defined by Business and
23 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
24 month during which respondent is practicing as a pharmacist for at least 40 hours as a
25 pharmacist as defined by Business and Professions Code section 4000 et seq.

26 15. Violation of Probation

27 If a respondent has not complied with any term or condition of probation, the board shall
28 have continuing jurisdiction over respondent, and probation shall automatically be extended, until

1 all terms and conditions have been satisfied or the board has taken other action as deemed
2 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
3 to impose the penalty that was stayed.

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

11 **16. Completion of Probation**

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

14 **17. Restricted Practice**

15 Respondent's practice of pharmacy shall be restricted to dispensing only dangerous drugs
16 and not any controlled substances until she completes twelve (12) hours of remedial education on
17 the topic of prescription drug abuse and corresponding responsibility preferably presented by the
18 Drug Enforcement Agency. This course shall be preapproved by the board, completed at
19 respondent's own expense and at least 50% of the course taken in person. Respondent shall
20 submit proof satisfactory to the board of compliance with this term of probation.

21 Failure to abide by this restriction or to timely submit proof to the board of compliance
22 therewith shall be considered a violation of probation.

23 **18. Remedial Education**

24 Within sixty (60) days of the effective date of this Decision, Respondent shall submit to the
25 Board or its designee, for prior approval, an appropriate program of remedial education related to
26 corresponding responsibility, pharmacy law, and pharmacy operations. The program of remedial
27 education shall be in addition to the education required under Term 17 of this Stipulated
28 Settlement and Disciplinary Order and shall consist of at least six (6) hours per year for each year

1 of the five (5) years of probation, and shall be completed at Respondent's own expense. All
2 remedial education shall be in addition to, and shall not be credited toward, continuing education
3 (CE) courses used for license renewal purposes.

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

8 Following the completion of each course, the Board or its designee may require the
9 Respondent, at his own expense, to take an approved examination to test the Respondent's
10 knowledge of the course. If the Respondent does not achieve a passing score on the examination,
11 this failure shall be considered a violation of probation. Any such examination failure shall
12 require Respondent to take another course approved by the Board in the same subject area.

13 19. **Supervised Practice**

14 During the period of probation, respondent shall practice only under the supervision of a
15 licensed pharmacist not on probation with the board. Upon and after the effective date of this
16 decision, respondent shall not practice pharmacy and her license shall be automatically suspended
17 until a supervisor is approved by the board or its designee. The supervision shall be, as required
18 by the board or its designee, either:

19 Continuous – At least 75% of a work week

20 Substantial - At least 50% of a work week

21 Partial - At least 25% of a work week

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

23 Within thirty (30) days of the effective date of this decision, respondent shall have her
24 supervisor submit notification to the board in writing stating that the supervisor has read the
25 decision in case number 4971 and is familiar with the required level of supervision as determined
26 by the board or its designee. It shall be the respondent's responsibility to ensure that her
27 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
28 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely

1 acknowledgements to the board shall be considered a violation of probation.

2 If respondent changes employment, it shall be the respondent's responsibility to ensure that
3 her employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to
4 the board. Respondent shall have her new supervisor, within fifteen (15) days after employment
5 commences, submit notification to the board in writing stating the direct supervisor and
6 pharmacist-in-charge have read the decision in case number 4971 and is familiar with the level of
7 supervision as determined by the board. Respondent shall not practice pharmacy and her license
8 shall be automatically suspended until the board or its designee approves a new supervisor.
9 Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
10 acknowledgements to the board shall be considered a violation of probation.

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

12 During suspension, respondent shall not enter any pharmacy area or any portion of the
13 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
14 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
15 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
16 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
17 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
18 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
19 and controlled substances. Respondent shall not resume practice until notified by the board.

20 During suspension, respondent shall not engage in any activity that requires the
21 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
22 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
23 designated representative for any entity licensed by the board.

24 Subject to the above restrictions, respondent may continue to own or hold an interest in any
25 licensed premises in which she holds an interest at the time this decision becomes effective unless
26 otherwise specified in this order.

27 Failure to comply with this suspension shall be considered a violation of probation.
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1 20. **No Ownership of Licensed Premises**

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

9 21. **Tolling of Suspension**

10 During the period of suspension, respondent shall not leave California for any period
11 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess
12 of the (10) days during suspension shall be considered a violation of probation. Moreover, any
13 absence from California during the period of suspension exceeding ten (10) days shall toll the
14 suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days
15 respondent is absent from California. During any such period of tolling of suspension,
16 respondent must nonetheless comply with all terms and conditions of probation.

17 Respondent must notify the board in writing within ten (10) days of departure, and must
18 further notify the board in writing within ten (10) days of return. The failure to provide such
19 notification(s) shall constitute a violation of probation. Upon such departure and return,
20 respondent shall not resume the practice of pharmacy until notified by the board that the period of
21 suspension has been satisfactorily completed.

22 22. **Ethics Course**

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

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

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23. **Enroll in PDMP**

Within thirty (30) calendar days of the effective date of this Decision, Respondent shall register in the California Prescription Drug Monitoring Program (PDMP).

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Adam B. Brown. 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: 06-28-2015 Linda Oanh Nguyen
LINDA OANH NGUYEN
Respondent

~~I have read and fully discussed with Respondent Linda Oanh Nguyen the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.~~

~~DATED: _____
Adam B. Brown
Attorney for Respondent~~

6-29-15
Re Espino
06/29/2015
Linda Oanh Nguyen

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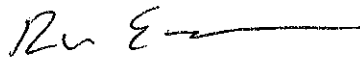
ENDORSEMENT

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

DATED: 6-29-15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General



DESIREE I. KELLOGG Row Espinoza
Deputy Attorney General
Attorneys for Complainant

06-29-2015



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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
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2996
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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9 **BEFORE THE**
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10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 4971

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

ACCUSATION

15 Pharmacy Permit No. PHY 50504

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

18 Pharmacist License No. RPH 92708

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

21 Pharmacist License No. RPH 44286

22 Respondents.
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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 Young (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.

1 8. Section 4300.1 of the Code states:

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

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10 **· STATUTORY AND REGULATORY PROVISIONS**

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

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

16 ...
17 (j) The violation of any of the statutes of this state, or any other state, or of the
18 United States regulating controlled substances and dangerous drugs...

19 ...
20 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
21 abetting the violation of or conspiring to violate any provision or term of this chapter
22 or of the applicable federal and state laws and regulations governing pharmacy,
23 including regulations established by the board or any other state or federal regulatory
24 agency.

25 ...
26 (q) Engaging in any conduct that subverts or attempts to subvert an
27 investigation of the board.

28 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 reoccurrence.

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.

10 COST RECOVERY

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

15 DRUG

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

19 FACTUAL ALLEGATIONS

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

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

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

1 NINTH CAUSE FOR DISCIPLINE

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

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

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10 TENTH CAUSE FOR DISCIPLINE

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

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

19 ELEVENTH CAUSE FOR DISCIPLINE

20 (Unprofessional Conduct against Respondents Linda Nguyen and Can Vuong)

21 43. Respondents are subject to disciplinary action under Code section 4301 for
22 unprofessional conduct in that they engaged in the activities described in paragraphs 22 through
23 32 above, which are incorporated herein by reference.

24 PRAYER

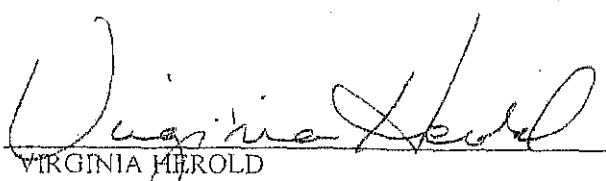
25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Board of Pharmacy issue a decision:

27 1. Revoking or suspending Pharmacy Permit Number PHY 50504, issued to Thanh Tam
28 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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