

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

In the Matter of the Accusation
Against:

HUNG NGOC HO
16572 Mount Neota Street
Fountain Valley, CA 92708

Pharmacist License No. RPH 47302

Respondent.

Case No. 5654

OAH No. 2016101034

**STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER**

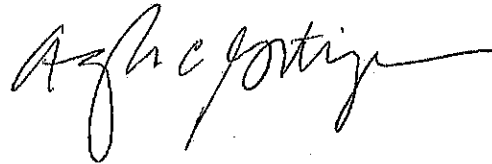
DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on September 6, 2017.

It is so ORDERED on August 7, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

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12 In the Matter of the Accusation Against:

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**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 Respondent.
17

18
19 In the interest of a prompt and speedy settlement of this matter, consistent with the public
20 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,
21 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will
22 be submitted to the Board for approval and adoption as the final disposition of the Accusation.

23 PARTIES

24 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
25 (Board). She brought this action solely in her official capacity and is represented in this matter by
26 Xavier Becerra, Attorney General of the State of California, by Ron Espinoza, Deputy Attorney
27 General.

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1 2. Hung Ngoc Ho (Respondent) is represented in this proceeding by attorney Adam
2 Brown, Esq., whose address is: Law Offices of Brown & Brown, 3848 W. Carson Street, Suite
3 206, Torrance, CA 90503.

4 3. On or about August 5, 1994, the Board issued Pharmacist License No. RPH 47302 to
5 Respondent Hung Ngoc Ho. The Pharmacist License was in full force and effect at all times
6 relevant to the charges brought in Accusation No. 5654, and will expire on March 31, 2018,
7 unless renewed.

8 JURISDICTION

9 4. Accusation No. 5654 was filed before the Board, and is currently pending against
10 Respondent. The Accusation and all other statutorily required documents were properly served
11 on Respondent on June 23, 2016. Respondent timely filed his Notice of Defense contesting the
12 Accusation.

13 5. A copy of Accusation No. 5654 is attached as Exhibit A and incorporated herein by
14 reference.

15 ADVISEMENT AND WAIVERS

16 6. Respondent has carefully read, fully discussed with counsel, and understands the
17 charges and allegations in Accusation No. 5654. Respondent has also carefully read, fully
18 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
19 Order.

20 7. Respondent is fully aware of his legal rights in this matter, including the right to a
21 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
22 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
23 to the issuance of subpoenas to compel the attendance of witnesses and the production of
24 documents; the right to reconsideration and court review of an adverse decision; and all other
25 rights accorded by the California Administrative Procedure Act and other applicable laws.

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

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1 CULPABILITY

2 9. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 5654.

4 10. Respondent agrees that his Pharmacist License is subject to discipline and he agrees
5 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

6 RESERVATION

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

11 CONTINGENCY

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

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

24 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
25 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
26 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
27 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
28

1 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
2 writing executed by an authorized representative of each of the parties.

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

6 **DISCIPLINARY ORDER**

7 IT IS HEREBY ORDERED that Pharmacist License No. RPH 47302 issued to Respondent
8 Hung Ngoc Ho is revoked. However, the revocation is stayed and Respondent is placed on
9 probation for five (5) years on the following terms and conditions.

10 1. **Suspension**

11 As part of probation, respondent is suspended from the practice of pharmacy for sixty (60)
12 consecutive days beginning the effective date of this decision.

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

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

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

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

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2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

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

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

3. Report to the Board

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

4. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff,

1 or failure to appear for two (2) or more scheduled interviews with the board or its designee during
2 the period of probation, shall be considered a violation of probation.

3 **5. Cooperate with Board Staff**

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

7 **6. Continuing Education**

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

10 **7. Notice to Employers**

11 During the period of probation, respondent shall notify all present and prospective
12 employers of the decision in Accusation case number 5654 and the terms, conditions and
13 restrictions imposed on respondent by the decision, as follows:

14 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
15 respondent undertaking any new employment, respondent shall cause his direct supervisor,
16 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
17 tenure of employment) and owner to report to the board in writing acknowledging that the listed
18 individual(s) has/have read the decision in Accusation case number 5654, and terms and
19 conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s)
20 and/or supervisor(s) submit timely acknowledgment(s) to the board.

21 If respondent works for or is employed by or through a pharmacy employment service,
22 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
23 licensed by the board of the terms and conditions of the decision in Accusation case number 5654
24 in advance of the respondent commencing work at each licensed entity. A record of this
25 notification must be provided to the board upon request.

26 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
27 (15) days of respondent undertaking any new employment by or through a pharmacy employment
28 service, respondent shall cause his direct supervisor with the pharmacy employment service to

1 report to the board in writing acknowledging that he has read the decision in Accusation case
2 number 5654 and the terms and conditions imposed thereby. It shall be respondent's
3 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely
4 acknowledgment(s) to the board.

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

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

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

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

18 **9. Reimbursement of Board Costs**

19 As a condition precedent to successful completion of probation, Respondent shall pay to the
20 Board costs of its investigation and prosecution in this matter in the amount of \$11,657.25, within
21 ninety (90) days of the effective date of the Decision. Alternatively, Respondent shall be allowed
22 to make payments on a plan authorized by the Board or its designee in writing, so long as all costs
23 are paid in full no less than twelve (12) months prior to the scheduled termination of the probation
24 term.

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

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1 The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to
2 reimburse the board its costs of investigation and prosecution.

3 **10. Probation Monitoring Costs**

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

8 **11. Status of License**

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

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

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

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

24 Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to
25 the board within ten (10) days of notification by the board that the surrender is accepted.

26 Respondent may not reapply for any license from the board for three (3) years from the effective
27 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
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1 of the date the application for that license is submitted to the board, including any outstanding
2 costs.

3 **13. Notification of a Change in Name, Residence Address, Mailing Address or**
4 **Employment**

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

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

12 **14. Tolling of Probation**

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

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

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

27 "Cessation of practice" means any calendar month during which respondent is
28 not practicing as a pharmacist for at least 40 hours, as defined by Business and

1 Professions Code section 4000 et seq . "Resumption of practice" means any calendar
2 month during which respondent is practicing as a pharmacist for at least 40 hours as a
3 pharmacist as defined by Business and Professions Code section 4000 et seq.

4 **15. Violation of Probation**

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

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

17 **16. Completion of Probation**

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

20 **17. Pharmacists Recovery Program (PRP)**

21 Within thirty (30) days of the effective date of this decision, respondent shall contact the
22 Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll,
23 successfully participate in, and complete the treatment contract and any subsequent addendums as
24 recommended and provided by the PRP and as approved by the board or its designee. The costs
25 for PRP participation shall be borne by the respondent.

26 If respondent is currently enrolled in the PRP, said participation is now mandatory and as of
27 the effective date of this decision is no longer considered a self-referral under Business and
28 Professions Code section 4362(c)(2). Respondent shall successfully participate in and complete

1 his current contract and any subsequent addendums with the PRP.

2 Failure to timely contact or enroll in the PRP, or successfully participate in and complete
3 the treatment contract and/or any addendums, shall be considered a violation of probation.

4 Probation shall be automatically extended until respondent successfully completes the PRP.

5 Any person terminated from the PRP program shall be automatically suspended by the board.

6 Respondent may not resume the practice of pharmacy until notified by the board in writing.

7 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a
8 licensed practitioner as part of a documented medical treatment shall result in the automatic
9 suspension of practice by respondent and shall be considered a violation of probation.

10 Respondent may not resume the practice of pharmacy until notified by the board in writing.

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

19 During suspension, respondent shall not engage in any activity that requires the
20 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
21 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
22 designated representative 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 he 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 Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not
28 timely paid to the PRP shall constitute a violation for probation. The board will collect unpaid

1 administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

2 **18. Random Drug Screening**

3 Respondent, at his own expense, shall participate in random testing, including but not
4 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
5 screening program as directed by the board or its designee. Respondent may be required to
6 participate in testing for the entire probation period and the frequency of testing will be
7 determined by the board or its designee. At all times, respondent shall fully cooperate with the
8 board or its designee, and shall, when directed, submit to such tests and samples for the detection
9 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its
10 designee may direct. Failure to timely submit to testing as directed shall be considered a violation
11 of probation. Upon request of the board or its designee, respondent shall provide documentation
12 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is
13 a necessary part of the treatment of the respondent. Failure to timely provide such documentation
14 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any
15 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment
16 shall be considered a violation of probation and shall result in the automatic suspension of
17 practice of pharmacy by respondent. Respondent may not resume the practice of pharmacy until
18 notified by the board in writing.

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

27 During suspension, respondent shall not engage in any activity that requires the
28 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the

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

3 Subject to the above restrictions, respondent may continue to own or hold an interest in any
4 licensed premises in which he holds an interest at the time this decision becomes effective unless
5 otherwise specified in this order.

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

7 **19. Abstain from Drugs and Alcohol Use**

8 Respondent shall completely abstain from the possession or use of alcohol, controlled
9 substances, dangerous drugs and their associated paraphernalia except when the drugs are
10 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon
11 request of the board or its designee, respondent shall provide documentation from the licensed
12 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the
13 treatment of the respondent. Failure to timely provide such documentation shall be considered a
14 violation of probation. Respondent shall ensure that he is not in the same physical location as
15 individuals who are using illicit substances even if respondent is not personally ingesting the
16 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia
17 not supported by the documentation timely provided, and/or any physical proximity to persons
18 using illicit substances, shall be considered a violation of probation.

19 **20. Prescription Coordination and Monitoring of Prescription Use**

20 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
21 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
22 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's
23 history with the use of controlled substances and/or dangerous drugs, and who will coordinate and
24 monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-
25 altering drugs. The approved practitioner shall be provided with a copy of the board's Accusation
26 and decision. A record of this notification must be provided to the board upon request.

27 Respondent shall sign a release authorizing the practitioner to communicate with the board about
28 respondent's treatment(s). The coordinating physician, nurse practitioner, physician assistant, or

1 psychiatrist shall report to the board on a quarterly basis for the duration of probation regarding
2 respondent's compliance with this condition. If any substances considered addictive have been
3 prescribed, the report shall identify a program for the time limited use of any such substances.
4 The board may require that the single coordinating physician, nurse practitioner, physician
5 assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive
6 medicine. Should respondent, for any reason, cease supervision by the approved practitioner,
7 respondent shall notify the board immediately and, within thirty (30) days of ceasing treatment,
8 submit the name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist
9 of respondent's choice to the board or its designee for its prior approval. Failure to timely submit
10 the selected practitioner or replacement practitioner to the board for approval, or to ensure the
11 required reporting thereby on the quarterly reports, shall be considered a violation of probation.

12 If at any time an approved practitioner determines that respondent is unable to practice
13 safely or independently as a pharmacist, the practitioner shall notify the board immediately by
14 telephone and follow up by written letter within three (3) working days. Upon notification from
15 the board or its designee of this determination, respondent shall be automatically suspended and
16 shall not resume practice until notified by the board that practice may be resumed.

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

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

1 Subject to the above restrictions, respondent may continue to own or hold an interest in any
2 licensed premises in which he holds an interest at the time this decision becomes effective unless
3 otherwise specified in this order.

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

5 **21. Community Services Program**

6 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
7 board or its designee, for prior approval, a community service program in which respondent shall
8 provide free health-care related services on a regular basis to a community or charitable facility or
9 agency for at least 72 hours per year for the second, third, and fourth years of probation, to be
10 completed no later than twelve (12) months prior to the scheduled termination of the probation
11 term. Within thirty (30) days of board approval thereof, respondent shall submit documentation
12 to the board demonstrating commencement of the community service program. A record of this
13 notification must be provided to the board upon request. Respondent shall report on progress
14 with the community service program in the quarterly reports. Failure to timely submit,
15 commence, or comply with the program shall be considered a violation of probation.

16 **22. Supervised Practice**

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

22 Continuous – At least 75% of a work week

23 Substantial - At least 50% of a work week

24 Partial - At least 25% of a work week

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

26 Within thirty (30) days of the effective date of this decision, respondent shall have his
27 supervisor submit notification to the board in writing stating that the supervisor has read the
28 decision in Accusation case number 5654 and is familiar with the required level of supervision as

1 determined by the board or its designee. It shall be the respondent's responsibility to ensure that
2 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to
3 the board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
4 acknowledgements to the board shall be considered a violation of probation.

5 If respondent changes employment, it shall be the respondent's responsibility to ensure that
6 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to
7 the board. Respondent shall have his new supervisor, within fifteen (15) days after employment
8 commences, submit notification to the board in writing stating the direct supervisor and
9 pharmacist-in-charge have read the decision in Accusation case number 5654 and is familiar with
10 the level of supervision as determined by the board. Respondent shall not practice pharmacy and
11 his license shall be automatically suspended until the board or its designee approves a new
12 supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
13 acknowledgements to the board shall be considered a violation of probation.

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

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

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

27 Subject to the above restrictions, respondent may continue to own or hold an interest in any
28 licensed premises in which he holds an interest at the time this decision becomes effective unless

1 otherwise specified in this order.

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

3 **23. No Ownership of Licensed Premises**

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

11 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a
12 manager, administrator, member, officer, director, trustee, associate, or partner of any additional
13 business, firm, partnership, or corporation licensed by the board. If respondent currently owns or
14 has any legal or beneficial interest in, or serves as a manager, administrator, member, officer,
15 director, trustee, associate, or partner of any business, firm, partnership, or corporation currently
16 or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold
17 that interest, but only to the extent of that position or interest as of the effective date of this
18 decision. Violation of this restriction shall be considered a violation of probation.

19 **24. Tolling of Suspension**

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

27 Respondent must notify the board in writing within ten (10) days of departure, and must
28 further notify the board in writing within ten (10) days of return. The failure to provide such

1 notification(s) shall constitute a violation of probation. Upon such departure and return,
2 respondent shall not resume the practice of pharmacy until notified by the board that the period of
3 suspension has been satisfactorily completed.

4 **25. Ethics Course**

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

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

11 **26. Remedial Education**

12 Within sixty (60) calendar days of the effective date of this decision, respondent shall
13 submit to the board or its designee, for prior approval, an appropriate program of remedial
14 education related to drug security and recordkeeping. The program of remedial education shall
15 consist of at least ten (10) hours each year of probation, 50% of which must be in-person, and at
16 respondent's own expense. All remedial education shall be in addition to, and shall not be
17 credited toward, continuing education (CE) courses used for license renewal purposes.

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

22 Following the completion of each course, the board or its designee may require the
23 respondent, at his expense, to take an approved examination to test the respondent's knowledge of
24 the course. If the respondent does not achieve a passing score on the examination, this failure
25 shall be considered a violation of probation. Any such examination failure shall require
26 respondent to take another course approved by the board in the same subject area.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Adam Brown, Esq. 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: _____
HUNG NGOC HO
Respondent

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

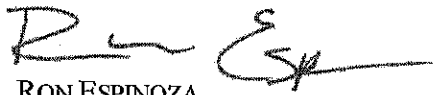
DATED: _____
ADAM BROWN, ESQ.
Attorney for Respondent

ENDORSEMENT

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

Dated: February 17, 2017

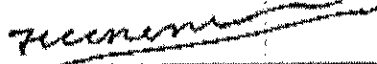
Respectfully submitted,
XAVIER BECERRA
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General


RON ESPINOZA
Deputy Attorney General
Attorneys for Complainant


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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Adam Brown, Esq. 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: 2/17/2017 
HUNG NGOC HO
Respondent

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

DATED: 2/17/17 
ADAM BROWN, ESQ.
Attorney for Respondent

ENDORSEMENT

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

Dated: Respectfully submitted,
XAVIER BECERRA
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General

RON ESPINOZA
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 5654

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 RON ESPINOZA
Deputy Attorney General
4 State Bar No. 176908
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2100
7 Facsimile: (619) 645-2061
Attorneys for Complainant
8

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

12 In the Matter of the Accusation Against:

Case No. 5654

13 **HUNG NGOC HO**
14 **16572 Mount Neota Street**
Fountain Valley, CA 92708

ACCUSATION

15 **Pharmacist License No. RPH 47302**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On August 5, 1994, the Board issued Pharmacist License Number RPH 47302 to
24 Hung Ngoc Ho (Respondent). The Pharmacist License was in full force and effect at all times
25 relevant to the charges brought herein and will expire on March 31, 2018, unless renewed.

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28 ///

1 **JURISDICTION**

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

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

8 5. Section 4300 of the Code states:

9 (a) Every license issued may be suspended or revoked.

10 (b) The board shall discipline the holder of any license issued by the
11 board, whose default has been entered or whose case has been heard by the board
and found guilty, by any of the following methods:

12 (1) Suspending judgment.

13 (2) Placing him or her upon probation.

14 (3) Suspending his or her right to practice for a period not
exceeding one year.

15 (4) Revoking his or her license.

16 (5) Taking any other action in relation to disciplining him or her as
the board in its discretion may deem proper.

17

18 (e) The proceedings under this article shall be conducted in
19 accordance with Chapter 5 (commencing with Section 11500) of Part 1 of
20 Division 3 of the Government Code, and the board shall have all the powers
21 granted therein. The action shall be final, except that the propriety of the action is
subject to review by the superior court pursuant to Section 1094.5 of the Code of
Civil Procedure.

22 6. Section 4300.1 of the Code states:

23 The expiration, cancellation, forfeiture, or suspension of a board-issued
24 license by operation of law or by order or decision of the board or a court of law,
25 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
26 proceed with any investigation of, or action or disciplinary proceeding against, the
licensee or to render a decision suspending or revoking the license.

27 7. Section 4302 defines "license" to include any license, permit, registration,
28 certificate, or exemption issued by the board.

1 STATUTORY PROVISIONS

2 8. Section 4022 of the Code states:

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

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

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

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

13 9. Section 4059 of the Code states in part:

14 (a) A person may not furnish any dangerous drug, except upon the
15 prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
16 naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
17 dangerous device, except upon the prescription of a physician, dentist, podiatrist,
18 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

19

20 10. Section 4301 of the Code states:

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

25

26 (c) Gross negligence.

27

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

31

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

37

38 ///

1 **REGULATORY PROVISIONS**

2 11. California Code of Regulations, title 16, section 1714 states:

3

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

7

8 **COST RECOVERY**

9 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
10 administrative law judge to direct a licentiate found to have committed a violation or violations
11 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
12 enforcement of the case, with failure of the licentiate to comply subjecting the license to not
13 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
14 may be included in a stipulated settlement.

15 **DRUGS**

16 13. Diphenoxylate/atropine is a Schedule V controlled substance as designated by
17 Health and Safety Code section 11058, subdivision (c)(4) and is categorized as a dangerous drug
18 under Code section 4022.

19 14. Carisoprodol, which has been reclassified on December 12, 2011, when the Drug
20 Enforcement Agency ruled under the Controlled Substances Act that it is a Schedule IV
21 controlled substance effective January 12, 2012, has since been categorized as a dangerous drug
22 under Code section 4022.

23 15. Promethazine/codeine is a Schedule V controlled substance as designated by
24 Health and Safety Code section 11058, subdivision (c)(1) and is categorized as a dangerous drug
25 under Code section 4022.

26 16. Hydrocodone/APAP is a Schedule III controlled substance as designated by
27 Health and Safety Code section 11056, subdivision (e)(4) and is categorized as a dangerous drug
28 under Code section 4022.

1	Morphine	15 mg tablet	350
2	Morphine	30 mg tablet	209
3	Oxycodone/APAP	7.5-325 mg tablet	810
4	Oxycodone	30 mg tablet	820
5	Oxycodone/APAP	7.5-325 mg tablet	740
6	Oxycodone/APAP	10-325mg tablet	112
7	Promethazine/ VC Codein	Syrup	409 ml
8	Promethazine/ Codein	Syrup	307 ml
9	Tramadol	50 mg tablet	668

23. On February 5, 2015, two covert cameras were installed at the store. On February 20, 2015, store security reviewed the footage recorded by the cameras and observed Respondent's suspicious behavior. In footage dated February 9, 2015, Respondent was observed opening a bottle of prescription drugs, consuming several pills from the bottle, and placing the bottle back on the drug shelf. In footage dated February 10, 2015, Respondent was observed placing drugs into numerous vials, concealing the vials in a coat, placing the coat in a store's plastic bag, and concealing the remaining drugs inside his pockets. In footage dated February 11, 2015, Respondent was observed filling drugs into vials and then concealing them in his pockets. In footage dated February 20, 2015, Respondent was observed removing a box inside his pants' pocket, wrapping the box in a paper towel, placing the wrapped box in a store's plastic bag, and taking money from the register pouch and placing it in his pocket. A store inquiry showed that Respondent did not have any purchases in February 2015.

24. On February 25, 2015, the store's asset protection staff interviewed Respondent regarding the security footage. Respondent admitted to taking a five-day supply of antibiotics without a prescription and without paying for the medication, as well as stealing vitamins from the pharmacy.

25. On February 26, 2015, the store's corporate director of pharmacy operations and the store's district manager conducted an audit. The audit determined the following variance in addition to the losses listed in paragraph 22, above, which is incorporated herein by reference as though fully set forth.

///

Controlled Substance in Preparation	Dosage Strength and Form	Quantity
Tramadol	50 mg tablet	77

26. On March 5, 2015, Respondent was terminated from employment at Vons #2035. On April 20, 2015, and April 22, 2015, a Pharmacy Board inspector conducted an inspection at Vons #2035. On April 15, 17, 2015, May 5, 14, and 26, 2015, and June 5 and 17, 2015, the Board inspector requested documentation related to losses at Vons #2035. On June 29, 2015, the Board inspector received from the store's corporate manager for pharmacy professional services, a copy of Vons #2035 purchase and dispensing data of all National Drug Code products for each drug during the period April 30, 2013, through January 29, 2015. On July 31, 2015, the Board inspector found Respondent responsible for the following reported losses during the period beginning December 11, 2013, through February 26, 2015, which is within Respondent's employment as the pharmacist-in-charge.

Controlled Substance in Preparation	Dosage Strength and Form	Quantity
Carisoprodol	350 mg tablet	2000
Diphenoxylate/Atropine	2.5 mg tablet	319
Hydrocodone/APAP	5-300 mg tablet	274
Hydrocodone/APAP	10-325 mg tablet	1200
Lorazepam	1 mg tablet	577
Lorazepam	2 mg tablet	224
Morphine	15 mg tablet	350
Morphine	30 mg tablet	209
Oxycodone	30 mg tablet	820
Oxycodone/APAP	7.5-325 mg tablet	1550
Oxycodone/APAP	10-325 mg tablet	112
Promethazine/ VC Codeine	Syrup	409 ml
Promethazine/ Codeine	Syrup	307 ml
Tramadol	50 mg tablet	668

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Failure to Maintain Operational Standards and Security)**

3 27. Respondent has subjected his Pharmacist License to discipline for unprofessional
4 conduct under Code section 4301, subdivision (o), for failing to provide effective control against
5 the theft or diversion of dangerous drugs, in violation of title 16 of the California Code of
6 Regulations, section 1714, subdivision (d). While Respondent was the pharmacist-in-charge,
7 3,041 tablets of schedule II drugs, 1,474 tablets of schedule III drugs, 3,469 tablets of schedule
8 IV drugs, and 319 tablets and 716 milliliters of schedule V drugs, were stolen and/or diverted
9 from the pharmacy at Vons #2035, as more fully set forth in paragraphs 13 – 26 above and
10 incorporated by this reference as though set forth in full herein.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct – Gross Negligence)**

13 28. Respondent has subjected his Pharmacist License to discipline for unprofessional
14 conduct under Code section 4301, subdivision (c), in that Respondent was grossly negligent in
15 the performance of his duties as pharmacist-in-charge for Vons #2035. The circumstances are
16 that while Respondent was pharmacist-in-charge, 3,041 tablets of schedule II drugs, 1,474 tablets
17 of schedule III drugs, 3,469 tablets of schedule IV drugs, and 319 tablets and 716 milliliters of
18 schedule V drugs, went missing from inventory, as more fully set forth in paragraphs 13 – 26
19 above and incorporated by this reference as though set forth in full herein.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Unprofessional conduct - Committing Acts Involving Dishonesty, Fraud or Deceit)**

22 29. Respondent has subjected his Pharmacist License to discipline for unprofessional
23 conduct under Code section 4301, subdivision (f), for committing acts involving dishonesty,
24 fraud or deceit while employed at Vons #2035. The circumstances are that on February 5, 2015,
25 two covert cameras were installed at the store. In the recorded security footage, Respondent was
26 seen opening a bottle of prescription drugs, consuming several pills from the bottle, as well as
27 taking and concealing drugs inside his pockets, and taking money from the pharmacy register
28 pouch and placing it in his pocket, as more fully set forth in paragraphs 23 – 24 above and

1 incorporated by this reference as though set forth in full herein. Respondent also admitted to
2 taking a five-day supply of antibiotics (generic Bactrim DS) without a prescription and without
3 paying for the medication.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct - Furnishing of Dangerous Drugs Without Prescription)**

6 30. Respondent has subjected his Pharmacist License to discipline for unprofessional
7 conduct under Code section 4301, subdivision (o), and under Code section 4059, for unlawfully
8 furnishing dangerous drugs without prescription, in that Respondent admitted that he took for
9 himself a five-day supply of antibiotics (generic Bactrim DS) from the pharmacy at Vons #2035
10 without a prescription and without paying for the medication. In a review of security camera
11 footage dated February 9, 2015, Respondent was also observed directly consuming pills from the
12 pharmacy's drug stock, as more fully set forth in paragraphs 23 - 24, above and incorporated by
13 this reference as though set forth in full herein.

14 **PRAYER**

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

- 17 1. Revoking or suspending Pharmacist License Number RPH 47302, issued to Hung
18 Ngoc Ho;
- 19 2. Ordering Hung Ngoc Ho to pay the Board of Pharmacy the reasonable costs of the
20 investigation and enforcement of this case, pursuant to Business and Professions Code section
21 125.3; and
- 22 3. Taking such other and further action as deemed necessary and proper.

23
24 DATED: 5/21/16

Virginia Herold

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

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VIRGINIA HEROLD