

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

In the Matter of the Accusation Against:

**FRESNO PHARMACY
QUI CAN LY, OWNER
4917 E. Kings Canyon Road, No. 102
Fresno, CA 93727**

Pharmacist License No. PHY 44487

Respondent.

Case No. 5707

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 at 5:00 p.m. on May 17, 2017.

It is so ORDERED on April 17, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

11 In the Matter of the Accusation Against:

Case No. 5707

12 **FRESNO PHARMACY**
13 **QUI VAN LY, OWNER |**
14 **4917 E. Kings Canyon Road, No. 102**
Fresno, CA 93727

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
FRESNO PHARMACY

15 **Pharmacy Permit No. PHY44487**

16 Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
22 (Board). She brought this action solely in her official capacity and is represented in this matter by
23 Xavier Becerra, Attorney General of the State of California, by Jeffrey M. Phillips, Deputy
24 Attorney General.

25 2. Respondent Fresno Pharmacy, LLC; Qui Van Ly, PIC (Respondent) is represented in
26 this proceeding by attorney Ivan Petrzelka, whose address is: 2855 Michelle Drive, Suite 180
27 Irvine, CA 92606-1027.

28 //

3. On or about November 19, 1999, the Board issued Pharmacy Permit No. PHY 44487 to Fresno Pharmacy, LLC; Qui Van Ly, Owner (Respondent). The Pharmacy Permit was in full force and effect at all times relevant to the charges brought in Accusation No. 5707, and will expire on November 1, 2017, unless renewed.

JURISDICTION

4. Accusation No. 5707 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 22, 2016. Respondent timely filed its Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 5707 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 5707. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 5707, if proven at a hearing, constitute cause for imposing discipline upon its Pharmacy permit.

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

5 11. Respondent agrees that its Pharmacy permit is subject to discipline and agrees to be
6 bound by the Board's terms and conditions, as set forth in the Disciplinary Order below.

7 RESERVATION

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

12 CONTINGENCY

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

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

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

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 44487 issued to Respondent Fresno Pharmacy, LLC; Qui Van Ly, Owner is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. Obey All Laws

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

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

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

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

2. Report to the Board

Respondent owner 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 owner shall state in each report under penalty of perjury whether there

1 has been compliance with all the terms and conditions of probation. Failure to submit timely
2 reports in a form as directed shall be considered a violation of probation. Any period(s) of
3 delinquency in submission of reports as directed may be added to the total period of probation.
4 Moreover, if the final probation report is not made as directed, probation shall be automatically
5 extended until such time as the final report is made and accepted by the board.

6 **3. Interview with the Board**

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

12 **4. Cooperate with Board Staff**

13 Respondent owner shall cooperate with the board's inspection program and with the board's
14 monitoring and investigation of respondent's compliance with the terms and conditions of their
15 probation. Failure to cooperate shall be considered a violation of probation.

16 **5. Reimbursement of Board Costs**

17 As a condition precedent to successful completion of probation, respondent owner shall pay
18 to the board its costs of investigation and prosecution in the amount of \$5,664.50. Respondent
19 may make payments in a payment plan approved by the Board. These costs are jointly and
20 severally liable for payment by both Respondent Ly and Respondent Fresno Pharmacy.

21 There shall be no deviation from any scheduled payment plan that the Board may approve,
22 absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s)
23 as directed shall be considered a violation of probation.

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

26 **6. Probation Monitoring Costs**

27 Respondent owner shall pay any costs associated with probation monitoring as determined
28 by the board each and every year of probation. Such costs shall be payable to the board on a

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

3 **7. Status of License**

4 Respondent owner shall, at all times while on probation, maintain current licensure with the
5 board. If respondent owner submits an application to the board, and the application is approved,
6 for a change of location, change of permit or change of ownership, the board shall retain
7 continuing jurisdiction over the license, and the respondent shall remain on probation as
8 determined by the board. Failure to maintain current licensure shall be considered a violation of
9 probation.

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

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

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

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

24 Respondent owner shall also, by the effective date of this decision, arrange for the
25 continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written
26 notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that
27 identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating
28 as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five

1 days of its provision to the pharmacy's ongoing patients, Respondent owner shall provide a copy
2 of the written notice to the board. For the purposes of this provision, "ongoing patients" means
3 those patients for whom the pharmacy has on file a prescription with one or more refills
4 outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60)
5 days.

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

9 Respondent owner further stipulates that he or she shall reimburse the board for its costs of
10 investigation and prosecution prior to the acceptance of the surrender.

11 **9. Notice to Employees**

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

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

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

26 Respondent shall provide, within thirty (30) days after the effective date of this decision,
27 signed and dated statements from its owners, including any owner or holder of ten percent (10%)
28 or more of the interest in respondent or respondent's stock, and any officer, stating under penalty

1 of perjury that said individuals have read and are familiar with state and federal laws and
2 regulations governing the practice of pharmacy. The failure to timely provide said statements
3 under penalty of perjury shall be considered a violation of probation.

4 **11. Posted Notice of Probation**

5 Respondent owner shall prominently post a probation notice provided by the board in a
6 place conspicuous and readable to the public. The probation notice shall remain posted during
7 the entire period of probation.

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

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

13 **12. Violation of Probation**

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

19 If respondent violates probation in any respect, the board, after giving respondent
20 notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order
21 that was stayed. Notice and opportunity to be heard are not required for those provisions stating
22 that a violation thereof may lead to automatic termination of the stay and/or revocation of the
23 license. If a petition to revoke probation or an accusation is filed against respondent during
24 probation, the board shall have continuing jurisdiction and the period of probation shall be
25 automatically extended until the petition to revoke probation or accusation is heard and decided,
26 and the charges and allegations in the Accusation shall be deemed true and correct.

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13. **Completion of Probation**

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

14. **Consultant for Owner or Pharmacist-In-Charge**

During the period of probation, respondent shall retain an independent consultant at its own expense who shall be responsible for reviewing pharmacy operations on a monthly basis for compliance by respondent with state and federal laws and regulations governing the practice of pharmacy and for compliance by respondent with the obligations of a pharmacist-in-charge. The consultant shall be a pharmacist licensed by and not on probation with the board and whose name shall be submitted to the board or its designee, for prior approval, within thirty (30) days of the effective date of this decision. During the period of probation, the board or its designee retains the discretion to reduce the frequency of the pharmacist consultant's review of Respondent Pharmacy's operations. Failure to timely retain, seek approval of, or ensure timely reporting by the consultant shall be considered a violation of probation.

ACCEPTANCE

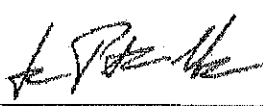
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Ivan Petrzalka. I understand the stipulation and the effect it will have on my Pharmacy Permit. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly,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

DATED: 02/13/17


FRESNO PHARMACY, LLC; QUI VAN LY, Owner
Respondent

I have read and fully discussed with Respondent Fresno Pharmacy, LLC; Qui Van Ly, Owner, the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: February 14, 2017


IVAN PETRZELKA
Attorney for Respondent

(9)
STIPULATED SETTLEMENT - FRESNO PHARMACY (CASE No. 5707)

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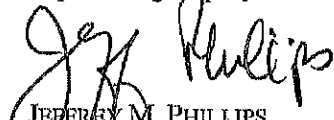
ENDORSEMENT

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

Dated: 2/14/17

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General


JEFFREY M. PHILLIPS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 5707

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13 **FRESNO PHARMACY**
QUI VAN LY, OWNER
14 **4917 E. Kings Canyon Road, No. 102**
Fresno, CA 93727

A C C U S A T I O N

15 **Pharmacy Permit No. PHY44487**

16 **QUI VAN LY**
4716 W. Alluvial Avenue
Fresno, CA 93722

17 **Pharmacist License No. RPH 41386**

18 Respondents.

19
20 Virginia Herold ("Complainant") alleges:

21 **PARTIES**

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

24 **Original Pharmacy Permit**

25 2. On or about November 19, 1999, the Board issued Original Pharmacy Permit Number
26 PHY 44487 to Qui Van Ly ("Respondent"), doing business as Fresno Pharmacy, with
27 Respondent as the Pharmacist-in-Charge. The Original Pharmacy Permit was in full force and
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1 effect at all times relevant to the charges brought herein and will expire on November 1, 2016,
2 unless renewed.

3 **Original Pharmacist License**

4 3. On or about October 16, 1987, the Board issued Original Pharmacist License Number
5 RPH 41386 to Respondent. The Original Pharmacist License was in full force and effect at all
6 times relevant to the charges brought herein and will expire on February 28, 2017, unless
7 renewed.

8 **JURISDICTION**

9 4. This Accusation is brought before the Board under the authority of the following
10 laws. All section references are to the Business and Professions Code (the "Code") unless
11 otherwise indicated.

12 5. Code section 4300 states, in pertinent part:

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

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

16 (1) Suspending judgment.

17 (2) Placing him or her upon probation.

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

19 (4) Revoking his or her license.

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

22 6. Code section 4300.1 states:

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

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11. Code section 4125(a) states:

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

12. Section 4307(a) of the Code states that:

Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner member, officer, director, associate, or partner of any partnership, corporation, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manger, administrator, owner, member, officer, director, associate, or partner had knowledge or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manger, administrator, owner, member, officer, director, associate, or partner of a licensee as follows:

(1) Where a probationary license is issued or where an existing license is placed on probation, this prohibition shall remain in effect for a period not to exceed five years.

(2) Where the license is denied or revoked, the prohibition shall continue until the license is issued or reinstated.

13. Health and Safety Code section 11165(d) states:

For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, as defined in the controlled substances schedules in federal law and regulations, specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code of Federal Regulations, the dispensing pharmacy, clinic, or other dispenser shall report the following information to the Department of Justice as soon as reasonably possible, but not more than seven days after the date a controlled substance is dispensed, in a format specified by the Department of Justice:

(1) Full name, address, and, if available, telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender, and date of birth of the ultimate user.

(2) The prescriber's category of licensure, license number, national provider identifier (NPI) number, if applicable, the federal controlled substance registration number, and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

(3) Pharmacy prescription number, license number, NPI number, and federal controlled substance registration number.

(4) National Drug Code (NDC) number of the controlled substance dispensed.

1 (5) Quantity of the controlled substance dispensed.

2 (6) International Statistical Classification of Diseases, 9th revision (ICD-9) or
3 10th revision (ICD-10) Code, if available.

4 (7) Number of refills ordered.

5 (8) Whether the drug was dispensed as a refill of a prescription or as a first-
6 time request.

7 (9) Date of origin of the prescription.

8 (10) Date of dispensing of the prescription.

9 14. California Code of Regulations, title 16 ("Regulations"), section 1716, states, in
10 pertinent part:

11 Pharmacists shall not deviate from the requirements of a prescription except
12 upon the prior consent of the prescriber or to select the drug product in accordance
13 with Section 4073 of the Business and Professions Code.

14 15. Regulations, section 1717(d), states:

15 Each pharmacy shall use the findings of its quality assurance program to
16 develop pharmacy systems and workflow processes designed to prevent medication
17 errors. An investigation of each medication error shall commence as soon as is
18 reasonably possible, but no later than 2 business days from the date the medication
19 error is discovered. All medication errors discovered shall be subject to a quality
20 assurance review.

21 16. Regulations, section 1718, states:

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

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

28 17. Code of Federal Regulations, title 21, section 1304.11, states, in pertinent part:

(a) 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 of the registrant and
intended for distribution as complimentary samples. A separate inventory shall be
made for each registered location and each independent activity registered, except as

provided in paragraph (e)(4) of this section. In the event controlled substances in the possession or under the control of the registrant are stored at a location for which he/she is not registered, the substances shall be included in the inventory of the registered location to which they are subject to control or to which the person possessing the substance is responsible. The inventory may be taken either as of opening of business or as of the close of business on the inventory date and it shall be indicated on the inventory.

(c) Biennial inventory date. After the initial inventory is taken, the registrant shall take a new inventory of all stocks of controlled substances on hand at least every two years. The biennial inventory may be taken on any date which is within two years of the previous biennial inventory date.

COST RECOVERY

18. Code section 125.3 provides, in pertinent part, that a Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

19. "Metformin hydrochloride", used in the management of diabetes, is a dangerous drug within the meaning of Code section 4022.

20. "Soma" is the brand name for Carisoprodol, a dangerous drug within the meaning of Code section 4022, and a controlled substance as defined by the Code of Federal Regulations, title 21, section 1308.14(c)(6).

BACKGROUND

21. On or about February 10, 2015, "T.M.", a health care provider, issued a prescription to "T.M.M.," for 40 tabs of 350 mg. of Soma (Carisoprodol). T.M.M.'s prescription was filled that same day by Respondent. T.M.M. took the medication dispensed by Respondent and subsequently suffered nausea, vomiting and diarrhea. On or about March 19, 2015, T.M.M. returned to T.M., who determined that Respondent furnished Metformin to T.M.M. instead of Soma (Carisoprodol).

22. On or about June 10, 2015, a Board Inspector conducted an inspection of Respondent Fresno Pharmacy in response to a complaint it received from T.M.M. The investigator found that Respondent did not have a Quality Assurance Program in place, did not have a Biennial Inventory

1 of controlled substances, and had not transmitted data to CURES since 2012. The investigator
2 further confirmed that Respondent furnished Metformin instead of Carisoprodol to T.M.M. and
3 that Respondent had not documented or investigated the medication error.

4 **FIRST CAUSE FOR DISCIPLINE**

5 (Code Violations Governing Pharmacy)

6 23. Respondent's pharmacy permit and pharmacist license is subject to disciplinary
7 action pursuant to Code section 4301(o), for unprofessional conduct, in that Respondent violated
8 or attempted to violate, directly or indirectly, assisted in or abetted the violation of, or conspired
9 to violate, the Pharmacy Law (Code section 4000, et seq.), as follows:

10 a. **Code section 4125(a)**: Respondent did not have a *Quality Assurance Program*, as
11 required.

12 b. **Health and Safety Code Section 11165(d)**: As of June 10, 2015, Respondent failed
13 to report to the Department of Justice through CURES controlled substances it had dispensed
14 since in or around 2012.

15 **SECOND CAUSE FOR DISCIPLINE**

16 (Violations of Federal and State Regulations Governing Pharmacy)

17 24. Respondent's pharmacy permit and pharmacist license is subject to disciplinary
18 action pursuant to Code section 4301(o), for unprofessional conduct, in that Respondent violated
19 or attempted to violate, directly or indirectly, assisted in or abetted the violation of, or conspired
20 to violate regulations governing pharmacy, as follows:

21 a. **Regulation, Section 1716**: On or about February 10, 2015, Respondent dispensed
22 metformin to T.M.M. in place of Carisoprodol.

23 b. **Regulation, Section 1711(d)**: Respondent failed to, within two business days of
24 discovery, document or investigate the medication error that occurred on or about February 10,
25 2015, when Respondent dispensed metformin to T.M.M. in place of Carisoprodol.

26 c. **Code of Federal Regulations, Title 21, Section 1304.11(a)&(c)**: As of on or about
27 June 10, 2015, Respondent failed to maintain a biennial inventory of controlled substances.

28 //

1 e. **Regulation section 1718:** On or about June 10, 2015, Respondent did not have a
2 controlled substances inventory available for inspection for at least three years prior.

3 **OTHER MATTERS**

4 25. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
5 PHY44487 issued to Fresno Pharmacy, then Fresno Pharmacy shall be prohibited from serving as
6 a manger, administrator, owner, member, officer, director, associate, or partner of a licensee for a
7 period not to exceed five years if Pharmacy Permit Number PHY44487 is placed on probation or
8 until Pharmacy Permit Number PHY44487 is reinstated, if the permit is revoked.

9 26. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
10 PHY44487 issued to Fresno Pharmacy or if discipline is imposed on Pharmacist License No.
11 RPH 41386 issued to Qui Van Ly, for violations during the time that Qui Van Ly acted as a
12 manger, administrator, owner, member, officer, director, associate, or partner and Qui Van Ly
13 had knowledge or knowingly participated in any conduct for which the permit or license was
14 disciplined, then Qui Van Ly shall be prohibited from serving as a manger, administrator, owner,
15 member, officer, director, associate, or partner on a license or permit issued by the Board for a
16 period not to exceed five years if discipline results in probation or until the license or permit is
17 reinstated, if the license or permit is revoked.

18 **PRAYER**

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

21 1. Revoking or suspending Original Pharmacy Permit Number PHY 44487, issued to
22 Qui Van Ly, doing business as Fresno Pharmacy;

23 2. Revoking or suspending Original Pharmacist License Number RPH 41386, issued to
24 Qui Van Ly;

25 3. Prohibiting Fresno Pharmacy from serving as a manager, administrator, owner,
26 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
27 Number PHY 44487 is placed on probation or until Pharmacy Permit Number PHY 44487 is
28 reinstated if the Pharmacy Permit is revoked;

1 4. Prohibiting Qui Van Ly from serving as a manager, administrator, owner, member,
2 officer, director, associate, or partner of a licensee for five years if either Pharmacy Permit
3 Number PHY 44487 or Pharmacist License Number RPH 41386 is placed on probation;

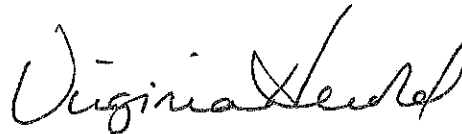
4 5. Prohibiting Qui Van Ly from serving as a manager, administrator, owner, member,
5 officer, director, associate, or partner of a licensee if either Pharmacy Permit Number PHY 44487
6 or Pharmacist License Number RPH 41386 is revoked, until Pharmacy Permit Number PHY
7 44487 or Pharmacist License Number RPH 41386 is reinstated;

8 6. Ordering Fresno Pharmacy and Qui Van Ly to pay the Board of Pharmacy the
9 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
10 Professions Code section 125.3; and,

11 7. Taking such other and further action as deemed necessary and proper.

12
13
14 DATED: _____

7/8/16



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

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