

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

In the Matter of the Accusation Against:

Case No. 5707

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

Pharmacist License No. RPH 41386

Respondent.

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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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5707

12 **QUI VAN LY**
13 **4716 W. Alluvial Avenue**
Fresno, CA 93722

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
QUI VAN LY

14 **Pharmacist License No. RPH 41386**

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

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

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

26 3. On or about October 16, 1987, the Board issued Pharmacist License No. RPH 41386
27 to Qui Van Ly (Respondent). The Pharmacist License was in full force and effect at all times
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1 relevant to the charges brought in Accusation No. 5707, and will expire on February 28, 2017,
2 unless renewed.

3 JURISDICTION

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

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

10 ADVISEMENT AND WAIVERS

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

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

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

23 CULPABILITY

24 9. Respondent understands and agrees that the charges and allegations in Accusation
25 No. 5707, if proven at a hearing, constitute cause for imposing discipline upon his Pharmacist
26 License.

27 10. For the purpose of resolving the Accusation without the expense and uncertainty of
28 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual

1 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
2 those charges.

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

5 RESERVATION

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

10 CONTINGENCY

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

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

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

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

4 **DISCIPLINARY ORDER**

5 IT IS HEREBY ORDERED that Pharmacist License No. RPH 41386 issued to Respondent
6 Qui Van Ly is revoked. However, the revocation is stayed and Respondent is placed on probation
7 for three (3) years on the following terms and conditions.

8 1. **Obey All Laws**

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

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

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

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

23 2. **Report to the Board**

24 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
25 designee. The report shall be made either in person or in writing, as directed. Among other
26 requirements, respondent shall state in each report under penalty of perjury whether there has
27 been compliance with all the terms and conditions of probation. Failure to submit timely reports
28 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency

1 in submission of reports as directed may be added to the total period of probation. Moreover, if
2 the final probation report is not made as directed, probation shall be automatically extended until
3 such time as the final report is made and accepted by the board.

4 **3. Interview with the Board**

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

10 **4. Cooperate with Board Staff**

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

14 **5. Continuing Education**

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

17 **6. Notice to Employers**

18 During the period of probation, respondent shall notify all present and prospective
19 employers of the decision in case number 5707 and the terms, conditions and restrictions imposed
20 on respondent by the decision, as follows:

21 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
22 respondent undertaking any new employment, respondent shall cause his direct supervisor,
23 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
24 tenure of employment) and owner to report to the board in writing acknowledging that the listed
25 individual(s) has/have read the decision in case number 5707, and terms and conditions imposed
26 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
27 submit timely acknowledgment(s) to the board.

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1 If respondent works for or is employed by or through a pharmacy employment service,
2 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
3 licensed by the board of the terms and conditions of the decision in case number 5707 in advance
4 of the respondent commencing work at each licensed entity. A record of this notification must be
5 provided to the board upon request.

6 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
7 (15) days of respondent undertaking any new employment by or through a pharmacy employment
8 service, respondent shall cause his direct supervisor with the pharmacy employment service to
9 report to the board in writing acknowledging that he has read the decision in case number 5707
10 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
11 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

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

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

25 **8. Reimbursement of Board Costs**

26 As a condition precedent to successful completion of probation, respondent shall pay to the
27 board its costs of investigation and prosecution in the amount of \$5,664.50. Respondent may
28 make payments in a payment plan approved by the Board. These costs are jointly and severally

1 liable for payment by both Respondent Ly and Respondent Fresno Pharmacy. There shall be no
2 deviation from any scheduled payment plan the Board may approve, absent prior written approval
3 by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be
4 considered a violation of probation.

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

7 **9. Probation Monitoring Costs**

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

12 **10. Status of License**

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

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

20 **11. License Surrender while on Probation/Suspension**

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

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1 Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to
2 the board within ten (10) days of notification by the board that the surrender is accepted.
3 Respondent may not reapply for any license from the board for three (3) years from the effective
4 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
5 of the date the application for that license is submitted to the board, including any outstanding
6 costs.

7 **12. Notification of a Change in Name, Residence Address, Mailing Address or**
8 **Employment**

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

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

16 **13. Tolling of Probation**

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

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

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

4 "Cessation of practice" means any calendar month during which respondent is
5 not practicing as a pharmacist for at least 40 hours, as defined by Business and
6 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
7 month during which respondent is practicing as a pharmacist for at least 40 hours as a
8 pharmacist as defined by Business and Professions Code section 4000 et seq.

9 **14. Violation of Probation**

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

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

23 **15. Completion of Probation**

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

26 **16. Remedial Education**

27 Within 60 days of the effective date of this decision, Respondent Ly shall submit to the
28 board or its designee, for prior approval, an appropriate program of remedial education related to

1 (1) medication error prevention, (2) quality assurance plans, (3) prescription drug abuse, and (4)
2 pharmacy law. The program of remedial education shall consist of at least 10 hours per year for
3 three years, for a total of 30 hours. This remedial education shall be completed prior to the
4 termination of probation, at Respondent's own expense. All remedial education shall be in
5 addition to, and shall not be credited toward, continuing education (CE) courses used for license
6 renewal purposes.

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

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

16 **17. Consultant for Owner or Pharmacist-In-Charge**

17 During the period of probation, respondent shall not supervise any intern pharmacist or
18 serve as a consultant to any entity licensed by the board. Respondent may be a pharmacist-in-
19 charge. However, if during the period of probation respondent serves as a pharmacist-in-charge,
20 respondent shall retain an independent consultant at his or her own expense who shall be
21 responsible for reviewing pharmacy operations on a monthly basis for compliance by respondent
22 with state and federal laws and regulations governing the practice of pharmacy and for
23 compliance by respondent with the obligations of a pharmacist-in-charge. The consultant shall be
24 a pharmacist licensed by and not on probation with the board and whose name shall be submitted
25 to the board or its designee, for prior approval, within thirty (30) days of the effective date of this
26 decision. Respondent shall not be a pharmacist-in-charge at more than one pharmacy or at any
27 pharmacy of which he or she is not the sole owner. Failure to timely retain, seek approval of, or
28 ensure timely reporting by the consultant shall be considered a violation of probation.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Ivan Petrzelka. 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: 02/13/17 
QUI VAN LY
Respondent

I have read and fully discussed with Respondent Qui Van Ly 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

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

Exhibit A

Accusation No. 5707

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

In the Matter of the Accusation Against:

Case No. 5707

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

Pharmacist License No. RPH 41386

Respondent.

DECISION AND ORDER

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

This Decision shall become effective on _____.

It is so ORDERED _____.

FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 JEFFREY M. PHILLIPS
Deputy Attorney General
4 State Bar No. 154990
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5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-6292
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 5707

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
25 placement of a license on a retired status, or the voluntary surrender of a license by a
licensee shall not deprive the board of jurisdiction to commence or proceed with any
26 investigation of, or action or disciplinary proceeding against, the licensee or to render
a decision suspending or revoking the license.

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STATUTORY AND REGULATORY PROVISIONS

7. Code section 4301 states, in pertinent part:

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

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

8. Code section 4113(c), states that “[t]he pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.”

9. Code section 4081, states, in pertinent part, that:

(a) All records of manufacture and of sale, acquisition, receipt, shipment, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, third-party logistics provider, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of a pharmacy, wholesaler, third-party logistics provider, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge, responsible manager, or designated representative-in-charge, for maintaining the records and inventory described in this section. . . .

10. Code section 4332 states:

Any person who fails, neglects, or refuses to maintain the records required by Section 4081 or who, when called upon by an authorized officer or a member of the board, fails, neglects, or refuses to produce or provide the records within a reasonable time, or who willfully produces or furnishes records that are false, is guilty of a misdemeanor.

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1 11. Code section 4125(a) states:

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

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

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

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

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

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

24 For each prescription for a Schedule II, Schedule III, or Schedule IV controlled
25 substance, as defined in the controlled substances schedules in federal law and
26 regulations, specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of
27 Title 21 of the Code of Federal Regulations, the dispensing pharmacy, clinic, or other
28 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

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

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

12 COST RECOVERY

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

17 DRUGS

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

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

23 BACKGROUND

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

29 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 a
6 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;

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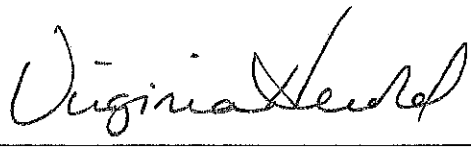
4. Prohibiting Qui Van Ly from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if either Pharmacy Permit Number PHY 44487 or Pharmacist License Number RPH 41386 is placed on probation;

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

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

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

DATED: 7/8/16



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

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