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

10 In the Matter of the First Amended Accusation
11 Against:

Case No. 3125

OAH No. L-2010040156

12 **MISSION COMMUNITY PHARMACY,**
13 **INC. d.b.a., MISSION PHARMACY**

14 **16569 Brookhurst Avenue**
15 **Fountain Valley, Ca 92708**

16 **TERESA TRUONG, President**
17 **(From 11/17/04 to Present)**

18 **ELIZABETH DUC TRAN, Pharmacist-in-**
19 **Charge**
20 **(From 12/23/05 to Present)**

21 **Pharmacy Permit No. PHY 46966**
22 **(From 11/17/04 to Present); and**

23 **ELIZABETH DUC TRAN**
24 **16373 Sandalwood St.**
25 **Fountain Valley, CA 92708**

26 **Pharmacist License No. RPH 48237**

27 Respondents.

FIRST AMENDED
ACCUSATION

28 Complainant alleges:

PARTIES

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

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

3 STATUTORY PROVISIONS

4 8. Section 490 of the Code states:

5 “A Board may suspend or revoke a license on the ground that the licensee has
6 been convicted of a crime, if the crime is substantially related to the qualifications, functions, or
7 duties of the business or profession for which the license was issued, or the ground of knowingly
8 making a false statement of fact required to be revealed in an application for such license. A
9 conviction within the meaning of this section means a plea or verdict of guilty or a conviction
10 following a plea of nolo contendere. Any action which a Board is permitted to take following the
11 establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment
12 of conviction has been affirmed on appeal, or when an order granting probation is made
13 suspending the imposition of sentence, irrespective of a subsequent order under the provisions of
14 Section 1203.4 of the Penal Code.”

15 9. Section 810 of the Code states:

16 “(a) It shall constitute unprofessional conduct and grounds for disciplinary
17 action, including suspension or revocation of a license or certificate, for a health care professional
18 to do any of the following in connection with his or her professional activities:

19 “(1) Knowingly present or cause to be presented any false or fraudulent claim
20 for the payment of a loss under a contract of insurance.

21 “(2) Knowingly prepare, make, or subscribe any writing, with intent to present
22 or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.”

23 10. Section 4021 of the Code states:

24 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
25 11053) of Division 10 of the Health and Safety Code.”

26 11. Section 4022 of the Code states

27 “Dangerous drug” or “dangerous device” means any drug or device unsafe for self-use in
28 humans or animals, and includes the following:

1 “(a) Any drug that bears the legend: “Caution: federal law prohibits dispensing without
2 prescription,” “Rx only,” or words of similar import.

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

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

8 12. Section 4063 of the Code states in part:

9 “No prescription for any dangerous drug ... may be refilled except upon authorization of
10 the prescriber. The authorization may be given orally or at the time of giving the original
11 prescription. No prescription for any dangerous drug that is a controlled substance may be
12 designated refillable as needed.”

13 13. Section 4301 of the Code states in part:

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

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18 “(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a)
19 of Section 11153 of the Health and Safety Code.

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

24 “(g) Knowingly making or signing any certificate or other document that falsely represents
25 the existence or nonexistence of a state of facts.

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27 “(j) The violation of any of the statutes of this state, or any other state, or of the United
28 States regulating controlled substances and dangerous drugs.

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“(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

....

“(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.”

14. Health and Safety Code section 11153 states in part:

“(a) A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order

1 purporting to be a prescription which is issued not in the usual course of professional
2 treatment or in legitimate and authorized research; or (2) an order for an addict or
3 habitual user of controlled substances, which is issued not in the course of
4 professional treatment or as part of an authorized narcotic treatment program, for the
5 purpose of providing the user with controlled substances, sufficient to keep him or her
6 comfortable by maintaining customary use.

7 “(b) Any person who knowingly violates this section shall be punished by
8 imprisonment in the state prison or in the county jail not exceeding one year, or by a
9 fine not exceeding twenty thousand dollars (\$20,000), or by both a fine and
10 imprisonment.”

11 15. Health and Safety Code section 11158 subdivision (a) states:

12 “(a) Except as provided in Section 11159 or in subdivision (b) of this section, no controlled
13 substance classified in Schedule II shall be dispensed without a prescription meeting the
14 requirements of this chapter. Except as provided in Section 11159 or when dispensed directly to
15 an ultimate user by a practitioner, other than a pharmacist or pharmacy, no controlled substance
16 classified in Schedule III, IV, or V may be dispensed without a prescription meeting the
17 requirements of this chapter.”

18 16. Health and Safety Code section 11165 states in part:

19 “(d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled
20 substance, the dispensing pharmacy or clinic shall provide the following information to the
21 Department of Justice on a weekly basis and in a format specified by the Department of Justice:

- 22 (1) Full name, address, and the telephone number of the ultimate user or
23 research subject, or contact information as determined by the Secretary of
24 the United States Department of Health and Human Services, and the
25 gender, and date of birth of the ultimate user.
- 26 (2) The prescriber's category of licensure and license number; federal controlled
27 substance registration number; and the state medical license number of any
28 prescriber using the federal controlled substance registration number of a
government-exempt facility.
- (3) Pharmacy prescription number, license number, and federal controlled
substance registration number
- (4) NDC (National Drug Code) number of the controlled substance dispensed.
- (5) Quantity of the controlled substance dispensed.
- (6) ICD-9 (diagnosis code), if available.
- (7) number of refills ordered.
- (8) Whether the drug was dispensed as a refill of a prescription or as a first-time
request.
- (9) Date of origin of the prescription.
- (10) Date of dispensing of the prescription.”

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1 17. Health and Safety Code section 11172 states "No person shall antedate or postdate a
2 prescription."

3 **REGULATORY PROVISIONS**

4 18. California Code of Regulations section 1716 states in part:

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

8 19. California Code of Regulations, title 16, section 1770, states:

9 "For the purpose of denial, suspension, or revocation of a personal or facility license
10 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
11 crime or act shall be considered substantially related to the qualifications, functions or duties of a
12 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
13 licensee or registrant to perform the functions authorized by his license or registration in a manner
14 consistent with the public health, safety, or welfare."

15 20. California Code of Regulations section 1761 states:

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

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

23 21. California Code of Regulations section 1707.3 states:

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

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1 **COST RECOVERY**

2 22. Section 125.3 of the Code states in part, that the Board may request the administrative
3 law judge to direct a licentiate found to have committed a violation or violations of the licensing
4 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
5 case.

6 **Controlled Substance / Dangerous Drug**

7 23. "Celebrex" is the generic name for Celecoxib and is a "dangerous drug," pursuant to
8 section 4022 of the Business and Professions Code.

9 24. Alprazolam, also known as Xanax, is controlled substance as defined in Health and
10 Safety Code section 11057, subdivision (d), and is categorized as a dangerous drug according to
11 Code section 4022.

12 25. Dilaudid, also known as Hydromorphone, is controlled substance as defined in Health
13 and Safety Code section 11055, subdivision (b)(1)(K), and is categorized as a dangerous drug
14 according to Code section 4022.

15 26. OxyContin, also known as Oxycodone, is controlled substance as defined in Health
16 and Safety Code section 11055, subdivision (b), and is categorized as a dangerous drug according
17 to Code section 4022.

18 27. Hydrocodone with Acetaminophen, also known as Vicodin, is controlled substance as
19 defined in Health and Safety Code section 11056, subdivision (e)(4), and is categorized as a
20 dangerous drug according to Code section 4022.

21 28. Hydrocodone, also known as NORCO, is controlled substance as defined in Health
22 and Safety Code section 11056, subdivision (e)(4), and is categorized as a dangerous drug
23 according to Code section 4022.

24 29. Diazepam, also known as Valium, is controlled substance as defined in Health and
25 Safety Code section 11057, subdivision (d), and is categorized as a dangerous drug according to
26 Code section 4022.

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1 30. Phentermine, also known as Adipex, is controlled substance as defined in Health and
2 Safety Code section 11057, subdivision (f)(2), and is categorized as a dangerous drug according
3 to Code section 4022.

4 31. **NON-PRESCRIPTION DRUG**: “Claritin” is the generic name for Loratadine and
5 is an antihistamine used for the treatment of seasonal allergies.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Conviction of a Substantially Related Crime)**

8 32. Respondent Elizabeth Duc Tran is subject to disciplinary action under sections 490
9 and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section
10 1770, in that Respondent has committed a crime substantially related to the qualifications,
11 functions, and duties of a licensed pharmacist. On or about July 10, 2007, after pleading guilty to
12 count 1 of the Superseding Information, Respondent was convicted of one count of violating Title
13 18, United States Code, Section 1035 (false statements relating to health care matters) in the
14 criminal proceeding entitled *United States of America v. Elizabeth Tran* (U.S. Dist. Ct., E.D. Cal.,
15 2007, No. 2:04CR00236). Respondent was placed on 48 months of formal probation after
16 serving 6 months in a designated half way house. The circumstances surrounding the conviction
17 are that from on or about July 2003, through on or about May 2004, Respondent defrauded the
18 Medi-Cal Program by falsely stating that her pharmacy (Grodant Mission Pharmacy Corporation
19 dba Mission Pharmacy, Pharmacy Permit No. PHY 46317) had provided Celebrex and Claritin to
20 Medi-Cal patients, when in fact, these drugs were not provided to the patients. Respondent
21 defrauded the State of California out of more than \$200,000 and less than \$400,000. (Pharmacy
22 Permit No. PHY 46317 issued to Grodant Mission Pharmacy Corporation was canceled on
23 November 8, 2004, due to a change of ownership).

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Dishonesty, Fraud, or Deceit)**

26 33. Respondent Elizabeth Duc Tran is subject to disciplinary action under section 4301,
27 subdivision (f), in that from on or about July 2003, through on or about May 2004, Respondent
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1 committed acts of dishonesty, fraud, or deceit. Complainant's allegations, as set forth in
2 paragraph 32, are incorporated by reference as though fully set forth.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Knowingly Signed False Documents)**

5 34. Respondent Elizabeth Duc Tran is subject to disciplinary action under section 4301,
6 subdivision (g), in that from on or about July 2003, through on or about May 2004, Respondent
7 knowingly signed false documents that misrepresented the existence or nonexistence of facts.
8 Complainant's allegations, as set forth in paragraph 32, are incorporated by reference as though
9 fully set forth.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Insurance Fraud)**

12 35. Respondent Elizabeth Duc Tran is subject to disciplinary action under sections 4300
13 and 810, subdivisions (a)(1) and (2), in that from on or about July 2003, through on or about May
14 2004, Respondent knowingly presented or caused to be presented a false or fraudulent claim for
15 the payment of a loss under a contract of insurance. Respondent prepared a writing, with the
16 intent to present or use the same, or to allow it to be presented or used, in support of a false or
17 fraudulent claim. Complainant's allegations, as set forth in paragraph 32, are incorporated by
18 reference as though fully set forth.

19 **FIFTH CAUSE FOR DISCIPLINE**

20 **(Violating or Attempting to Violate the Terms or Provisions of the Board)**

21 36. Respondent Elizabeth Duc Tran is subject to disciplinary action under section 4301,
22 subdivision (o), in that from on or about July 2003, through on or about May 2004, Respondent
23 violated or attempted to violate the terms or provisions of the Board. Complainant's allegations,
24 as set forth in paragraph 32, are incorporated by reference as though fully set forth.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Unauthorized Refill of a Controlled Substance)**

3 37. Respondents Mission Community Pharmacy, Inc., and Elizabeth Duc Tran are subject
4 to disciplinary action under section 4063, in that Respondents dispensed prescriptions for
5 controlled substances without prescriber authorization as follows:

6 a. On or about July 15, 2008, Respondents dispensed prescription no. 767729 for 130
7 Hydrocodone with Acetaminophen to Patient RW and prescription no. 767730 for 100 Diazepam
8 to Patient RW without authorization from a prescriber.

9 b. On or about September 10, 2008, Respondents dispensed prescription no. 775261 for
10 30 Phentermine to Patient MH without authorization from a prescriber.

11 c. On or about September 16, 2008, Respondents dispensed prescription no. 775755 for
12 150 Hydrocodone with Acetaminophen to Patient BW and prescription no. 775756 for 100
13 Alprazolam to Patient BW without authorization from a prescriber.

14 d. On or about November 19, 2008, Respondents dispensed prescription no. 784776 for
15 150 Hydrocodone with Acetaminophen to Patient RW and prescription no. 784777 for 100
16 Diazepam to Patient RW without authorization from a prescriber.

17 e. On or about November 19, 2008, Respondents dispensed prescription no. 784779 for
18 150 Hydrocodone with Acetaminophen to Patient LW and prescription no. 784780 for 100
19 Alprazolam to Patient LW without authorization from a prescriber.

20 **SEVENTH CAUSE FOR DISCIPLINE**

21 **(Ensuring Prescription is for Legitimate Medical Purpose)**

22 38. Respondents Mission Community Pharmacy, Inc., and Elizabeth Duc Tran are subject
23 to disciplinary action under section 4301, subdivision (j), Health and Safety Code section 11153,
24 subdivision (a), in conjunction with California Code of Regulations section 1761, subdivision (b),
25 in that Respondents dispensed prescriptions for controlled substances without determining if the
26 prescription was for a legitimate medical purpose. Specifically, Respondents dispensed
27 prescriptions for patients who lived far away from the pharmacy, dispensed prescriptions early,
28 and dispensed prescriptions that duplicated therapy as follows:

1 a. Respondents dispensed the following three (3) prescriptions to Patient KMcC on:
2 September 15, 2008, prescription no. 780012 for 100 Alprazolam; September 26, 2008,
3 prescription no. 781935 for 100 Alprazolam; and October 9, 2008, prescription no. 783882 for
4 100 Alprazolam.

5 b. Respondents dispensed the following five (5) prescriptions to Patient KMcC on:
6 August 14, 2008, prescription # 775828 for 100 Dilaudid; August 26, 2008, prescription no.
7 777367 for 150 Dilaudid; September 8, 2008, prescription no. 778951 for 100 Dilaudid;
8 September 26, 2008, prescription no. 781933 for 150 Dilaudid; and October 9, 2008, prescription
9 no. 783880 for 150 Dilaudid.

10 c. Respondents dispensed the following four (4) prescriptions to Patient AO on;
11 September 12, 2008, prescription no. 779632 for 90 OxyContin; September 23, 2008, prescription
12 no. 781294 for 90 OxyContin; October 24, 2008, prescription no. 786336 for 90 OxyContin; and
13 December 2, 2008, prescription no. 792185 for 90 OxyContin;

14 d. Respondents dispensed the following four (4) prescriptions to Patient AO on;
15 September 15, 2008, prescription no. 779891 for 100 Dilaudid; October 31, 2008, prescription no.
16 787373 for 150 Dilaudid; December 4, 2008, prescription no. 792615 for 150 Dilaudid; and
17 December 20, 2008, prescription no. 794990 for 150 Dilaudid.

18 e. Respondents dispensed the following two (2) prescriptions to Patient AO on; October
19 10, 2008, prescription no. 784079 for 150 Hydrocodone with Acetaminophen; and October 29,
20 2008, prescription no. 787035 for 100 Hydrocodone with Acetaminophen.

21 f. Respondents dispensed the following two (2) prescriptions to Patient AO on:
22 December 4, 2008, prescription no. 792616 for 100 Alprazolam; and December 20, 2008,
23 prescription no. 794991 for 100 Alprazolam.

24 g. Respondents dispensed the following two (2) prescriptions to Patient AO on April 9,
25 2009, prescription no. 809247 for 150 Dilaudid and prescription no. 809249 for 90 OxyContin.

26 h. Respondents dispensed the following four (4) prescriptions to Patient UH on: October
27 27, 2008, prescription no. 786758 for 150 Dilaudid; November 10, 2008, prescription no. 788939
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1 for 150 Dilaudid; December 3, 2008, prescription no. 792358 for 150 Dilaudid; and December 4,
2 2008, prescription no. 792656 for 150 Dilaudid.

3 i. Respondents dispensed prescription no. 792562 for 90 OxyContin to Patient UH on
4 December 3, 2008.

5 j. Respondents dispensed the following two (2) prescriptions to Patient GJ on July 12,
6 2008, prescription no. 771497 for 90 OxyContin and prescription no. 771498 for 240 Dilaudid.

7 k. Respondents dispensed the following two (2) prescriptions to Patient GJ on
8 December 9, 2008, prescription no. 793533 for 90 OxyContin and prescription no. 793534 for
9 150 Dilaudid.

10 l. Respondents dispensed the following two (2) prescriptions to Patient LJ on:
11 November 3, 2008, prescription no. 787721 for 150 Dilaudid; and November 4, 2008,
12 prescription no. 787879 for 90 OxyContin.

13 m. Respondents dispensed two (2) prescriptions to Patient KM on December 9, 2008,
14 prescription no. 793525 for 90 OxyContin and prescription no. 793529 for 150 Dilaudid.

15 **EIGHTH CAUSE FOR DISCIPLINE**

16 **(Excessive Furnishing of Controlled Substances)**

17 39. Respondents Mission Community Pharmacy, Inc., and Elizabeth Duc Tran are subject
18 to disciplinary action under section 4301, subdivision (d), in that Respondents excessively
19 furnished controlled substances. Complainant's allegations as set forth in paragraphs 37,
20 subparagraphs (a) through (e) and 38, subparagraphs (a) through (m), inclusive, are incorporated
21 by reference as though fully set forth.

22 **NINTH CAUSE FOR DISCIPLINE**

23 **(Dispensing Postdated or Antedated Prescriptions)**

24 40. Respondents Mission Community Pharmacy, Inc., and Elizabeth Duc Tran are subject
25 to disciplinary action under section 4301, subdivision (j) in conjunction with Health and Safety
26 Code 11158, subdivision (a), in that Respondents filled prescriptions that did not meet the
27 requirements of the Health and Safety Code. Specifically, Respondents dispensed prescriptions
28 that were postdated or antedated in violation of Health and Safety Code 11172. Respondents

1 filled and dispensed the following controlled substances earlier than the date on the written
2 prescription as follows:

- 3 a. On or about September 8, 2008, Respondents dispensed to Patient KMcC,
4 prescription no. 778951 for 100 Dilaudid when the prescription was dated September 23, 2008.
- 5 c. On or about December 11, 2008, Respondents dispensed to Patient KB, prescription
6 no. 793747 for 150 Dilaudid when the prescription was dated December 23, 2008.
- 7 d. On or about December 11, 2008, Respondents dispensed to Patient KB, prescription
8 no. 793748 for 100 Alprazolam when the prescription was dated December 23, 2008.
- 9 e. On or about April 1, 2009, Respondents dispensed to Patient CT, prescription no.
10 808130 for 150 Dilaudid when the prescription was dated April 18, 2009.
- 11 f. On or about April 1, 2009, Respondents dispensed to Patient CT, prescription no.
12 808131 for 100 Alprazolam when the prescription was dated April 18, 2009.

13 **TENTH CAUSE FOR DISCIPLINE**

14 **(Erroneous Prescriptions)**

15 41. Respondents Mission Community Pharmacy, Inc., and Elizabeth Duc Tran are subject
16 to disciplinary action under section 4301, subdivision (o), in conjunction with California Code of
17 Regulations section 1761, subdivision (a), in that Respondents dispensed prescriptions containing
18 an irregularity, uncertainty or ambiguity. Complainant's allegations as set forth in paragraph 40,
19 subparagraphs (a) through (f), inclusive, are incorporated by reference as though fully set forth.

20 **ELEVENTH CAUSE FOR DISCIPLINE**

21 **(Variation from Prescription)**

22 42. Respondents Mission Community Pharmacy, Inc., and Elizabeth Duc Tran are subject
23 to disciplinary action under section 4031, subdivision (o), in conjunction with California Code of
24 Regulations section 1716, in that Respondents dispensed prescriptions for controlled substances
25 that varied from the written prescription as follows:

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1 a. On or about July 3, 2008, Respondents dispensed prescription no. 770237 for 100
2 Alprazolam, to Patient KE, under the name of a different doctor than what was designated on the
3 written prescription.

4 b. On or about December 1, 2008, Respondents dispensed prescription no. 792095 for
5 150 Hydrocodone with Acetaminophen, to Patient MM, under the name of a different doctor than
6 what was designated on the written prescription.

7 c. On or about December 23, 2008, Respondents dispensed prescription no. 795237 for
8 150 Hydrocodone with Acetaminophen, to Patient MM, under the name of a different doctor than
9 what was designated on the written prescription.

10 **TWELFTH CAUSE FOR DISCIPLINE**

11 **(Failure to Review Prescriptions)**

12 43. Respondents Mission Community Pharmacy, Inc., and Elizabeth Duc Tran are subject
13 to disciplinary action under section 4301, subdivision (o), in conjunction with California Code of
14 Regulations section 1707.3, in that Respondents failed to review patients' drug therapy and
15 medication record before each drug was delivered and failed to screen for severe potential drug
16 therapy problems. Complainants allegations as set forth in paragraph 37, subparagraphs (a)
17 through (e); paragraph 38, subparagraph (a) through (m); paragraph 39, paragraph 40,
18 subparagraphs (a) through (f); paragraph 41; paragraph 42, subparagraphs (a) through (c),
19 inclusive, are incorporated by reference as though fully set forth.

20 **THIRTEENTH CAUSE FOR DISCIPLINE**

21 **(Failure to Report Controlled Substances to CURES)**

22 44. Respondents Mission Community Pharmacy, Inc., and Elizabeth Duc Tran are subject
23 to disciplinary action under section 4301, subdivision (j), in conjunction with Health and Safety
24 Code section 11165, subdivision (d), in that, Respondents failed to report in prescriptions for
25 controlled substances to the Department of Justice' electronic reporting system "CURES" as
26 follows:

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1 a. Respondents failed to report numerous prescriptions for controlled substances during
2 the time period of January 3, 2009 through February 2, 2009, for certain prescriptions that fall
3 within the range of prescription nos. 796110 through 799985.

4 b. Respondents failed to report numerous prescriptions for controlled substances during
5 the time period of February 7, 2009 through March 16, 2009, for certain prescriptions that fall
6 within the range of prescription nos. 800874 through 806013.

7 **DISCIPLINE CONSIDERATIONS**

8 45. To determine the degree of discipline, if any, to be imposed on Respondents,
9 Complainant alleges:

10 a. On or about June 15, 2004, the Board of Pharmacy issued Citation No. CI 2003
11 27662 to Respondent Pharmacist-in-Charge Elizabeth Duc Tran, RPH 48237 for violating
12 California Code of Regulations, title 16, section 1716 (variation from a prescription).
13 Pharmacist-in-Charge Elizabeth Duc Tran, RPH 48237 dispensed Ziagen (generic name:
14 Abacavir) instead of Tenofovir (brand name: Viread), which had been prescribed. The citation
15 was issued with a fine in the amount of \$125.00 and is now final.

16 b. On or about May 4, 2006, the Board of Pharmacy issued Citation No. CI 2005 30110
17 to Respondent Mission Community Pharmacy, Inc. dba Mission Pharmacy, Permit No. PHY
18 46966, for violating Business and Professions Code section 4342 (actions by Board to prevent
19 sales of preparations of drugs lacking quality or strength) and Health & Safety Code section
20 11165 (Controlled Substance Utilization Review and Evaluation System). On December 22,
21 2005, while under the supervision of Pharmacist-In-Charge Theresa Van Truong, RPH 50360,
22 numerous expired drugs were found in the pharmacy's active stock, and the electronic monitoring
23 of schedule II prescriptions had not been transmitted as required. The citation was issued with a
24 fine in the amount of \$500.00 and is now final.

25 **PRAYER**

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

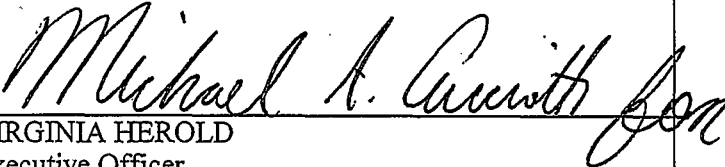
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1. Revoking or suspending Pharmacy Permit Number PHY 46966, issued to Mission Community Pharmacy, Inc. dba Mission Pharmacy;
2. Revoking or suspending Pharmacist License Number RPH 48237, issued to Elizabeth Duc Tran;
3. Ordering Mission Community Pharmacy, Inc. dba Mission Pharmacy; and Elizabeth Duc Tran to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and
4. Taking such other and further action as deemed necessary and proper.

DATED:

10/21/10



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

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6

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. 3125

13 GRODANT MISSION PHARMACY
14 CORPORATION
d.b.a., MISSION PHARMACY
15 14860 Roscoe Blvd. #104
Panorama City, CA 91402
16 ELIZABETH DUC TRAN,
President/Pharmacist-in-Charge
(From 4/15/03 to 11/08/04)
Pharmacy Permit No. PHY 46317
(Canceled on 11/08/04)

ACCUSATION

17 and

18 MISSION COMMUNITY PHARMACY, INC.
d.b.a., MISSION PHARMACY
19 14860 Roscoe Blvd. #104
Panorama City, CA 91402
20 TERESA TRUONG, President
(From 11/17/04 to Present)
21 ELIZABETH DUC TRAN, Pharmacist-in-Charge
(From 12/23/05 to Present)
22 Pharmacy Permit No. PHY 46966
(From 11/17/04 to Present)

23 and

24 ELIZABETH DUC TRAN
25 16373 Sandalwood St.
Fountain Valley, CA 92708
26 Pharmacist License No. RPH 48237

27 Respondents.
28

1 Complainant alleges:

2 PARTIES

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

6 2. On or about April 15, 2003, the Board issued Pharmacy Permit No. PHY
7 46317 to Grodant Mission Pharmacy Corporation (Respondent Grodant Mission Pharmacy), to
8 do business as Mission Pharmacy, with Elizabeth Duc Tran, as President/Pharmacist-in-Charge
9 from April 15, 2003 to November 8, 2004. The Pharmacy Permit was canceled on November 8,
10 2004, due to a change of ownership.

11 3. On or about November 17, 2004, the Board issued Pharmacy Permit No.
12 PHY 46966 to Mission Community Pharmacy, Inc., (Respondent Mission Community
13 Pharmacy) doing business as Mission Pharmacy, with Theresa Truong, as President since
14 November 17, 2004 and Elizabeth Duc Tran, as Pharmacist-in-Charge since December 23, 2005.
15 The Pharmacy Permit will expire on November 1, 2009, unless renewed.

16 4. On or about August 14, 1995, the Board issued Pharmacist License No.
17 RPH 48237 to Elizabeth Duc Tran (Respondent Tran). The Pharmacist License was in full force
18 and effect at all times relevant to the charges brought herein and will expire on December 31,
19 2010, unless renewed.

20 5. Respondent Grodant Mission Pharmacy, Respondent Mission Community
21 Pharmacy and Respondent Tran are sometimes referred to collectively as "Respondents."

22 JURISDICTION

23 6. This Accusation is brought before the Board, under the authority of the
24 following laws. All section references are to the Business and Professions Code unless otherwise
25 indicated.

26 STATUTORY PROVISIONS

27 7. Section 118, subdivision (b), of the Code provides that the
28 suspension/expiration of a license shall not deprive the Board of jurisdiction to proceed with a

1 disciplinary action during the period within which the license may be renewed, restored, reissued
2 or reinstated.

3 8. Section 490 of the Code states:

4 "A Board may suspend or revoke a license on the ground that the licensee has
5 been convicted of a crime, if the crime is substantially related to the qualifications, functions, or
6 duties of the business or profession for which the license was issued, or the ground of knowingly
7 making a false statement of fact required to be revealed in an application for such license. A
8 conviction within the meaning of this section means a plea or verdict of guilty or a conviction
9 following a plea of nolo contendere. Any action which a Board is permitted to take following the
10 establishment of a conviction may be taken when the time for appeal has elapsed, or the
11 judgment of conviction has been affirmed on appeal, or when an order granting probation is
12 made suspending the imposition of sentence, irrespective of a subsequent order under the
13 provisions of Section 1203.4 of the Penal Code."

14 9. Section 810 of the Code states:

15 "(a) It shall constitute unprofessional conduct and grounds for disciplinary action,
16 including suspension or revocation of a license or certificate, for a health care professional to do
17 any of the following in connection with his or her professional activities:

18 "(1) Knowingly present or cause to be presented any false or fraudulent claim for
19 the payment of a loss under a contract of insurance.

20 "(2) Knowingly prepare, make, or subscribe any writing, with intent to present or
21 use the same, or to allow it to be presented or used in support of any false or fraudulent claim."

22 10 Section 4300 of the Business and Professions Code provides, in pertinent
23 part, that every license issued by the Board is subject to discipline, including suspension or
24 revocation.

25 11. Section 4301 of the Code states:

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

1 following:

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

.....
"(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

.....
"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

.....
"(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

1 applicable federal and state laws and regulations governing pharmacy, including regulations
2 established by the board or by any other state or federal regulatory agency.”

3 **REGULATORY PROVISIONS**

4 12. California Code of Regulations, title 16, section 1770, states:

5 "For the purpose of denial, suspension, or revocation of a personal or facility
6 license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions
7 Code, a crime or act shall be considered substantially related to the qualifications, functions or
8 duties of a licensee or registrant if to a substantial degree it evidences present or potential
9 unfitness of a licensee or registrant to perform the functions authorized by his license or
10 registration in a manner consistent with the public health, safety, or welfare."

11 **COST RECOVERY**

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

16 14. **DANGEROUS DRUG**

17 "Celebrex" is the generic name for Celecoxib and is a "dangerous drug," pursuant
18 to section 4022 of the Business and Professions Code.

19 15. **NON-PRESCRIPTION DRUG**

20 "Claritin" is the generic name for Loratadine and is an antihistamine used for the
21 treatment of seasonal allergies.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Conviction of a Substantially Related Crime)**

24 16 Respondent Tran has subjected her license to discipline pursuant to
25 sections 490 and 4301, subdivision (l) of the Code, in conjunction with California Code of
26 Regulations, title 16, section 1770, in that Respondent has committed a crime substantially
27 related to the qualifications, functions, and duties of a licensed pharmacist. On or about July 10,
28 2007, after pleading guilty to count 1 of the Superseding Information, Respondent was convicted

1 of one count of violating Title 18, United States Code, Section 1035 (false statements relating to
2 health care matters) in the criminal proceeding entitled *United States of America v. Elizabeth*
3 *Tran* (U.S. Dist. Ct., E.D.Cal., 2007, No. 2:04CR00236). Respondent was placed on 48 months
4 of formal probation after serving 6 months in a designated half way house. The circumstances
5 surrounding the conviction are that from on or about July 2003, through on or about May 2004,
6 Respondent defrauded the Medi-Cal Program by falsely stating that her pharmacy had provided
7 Celebrex and Claritin to Medi-Cal patients, when in fact, these drugs were not provided to the
8 patients. Respondent defrauded the State of California out of more than \$200,000 and less than
9 \$400,000.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Dishonesty, Fraud, or Deceit)**

12 17. Respondents are subject to disciplinary action under section 4301,
13 subdivision (f) of the Code, in that from on or about July 2003, through on or about May 2004,
14 Respondents committed acts of dishonesty, fraud, or deceit. Complainant refers to, and by this
15 reference incorporates, the allegations set forth above in paragraph 16, inclusive, as though set
16 forth fully.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Knowingly Signed False Documents)**

19 18. Respondents are subject to disciplinary action under section 4301,
20 subdivision (g) of the Code, in that from on or about July 2003, through on or about May 2004,
21 Respondents knowingly signed false documents that misrepresented the existence or
22 nonexistence of facts. Complainant refers to, and by this reference incorporates, the allegations
23 set forth above in paragraph 16, inclusive, as though set forth fully.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Insurance Fraud)**

26 19. Respondents are subject to disciplinary action under sections 4300 and
27 810, subdivision (a)(1) and (2) of the Code, in that from on or about July 2003, through on or
28 about May 2004, Respondents knowingly presented or caused to be presented a false or

1 fraudulent claim for the payment of a loss under a contract of insurance. Respondents prepared a
2 writing, with the intent to present or use the same, or to allow it to be presented or used, in
3 support of a false or fraudulent claim. Complainant refers to, and by this reference incorporates,
4 the allegations set forth above in paragraph 16, inclusive, as though set forth fully.

5 **FIFTH CAUSE FOR DISCIPLINE**

6 **(Violating or Attempting to Violate the Terms or Provisions of the Board)**

7 20. Respondents are subject to disciplinary action under sections 4301,
8 subdivision (o) of the Code, in that from on or about July 2003, through on or about May 2004,
9 Respondents violated or attempted to violate the terms or provisions of the Board. Complainant
10 refers to, and by this reference incorporates, the allegations set forth above in paragraphs 16
11 through 19, inclusive, as though set forth fully.

12 **DISCIPLINE CONSIDERATIONS**

13 21. To determine the degree of discipline, if any, to be imposed on
14 Respondent, Complainant alleges:

15 a. On or about June 15, 2004, the Board of Pharmacy issued Citation No. CI
16 2003 26644 to Respondent Grodant Mission Pharmacy Corporation dba Mission Pharmacy, PHY
17 46317 for violating California Code of Regulations, title 16, section 1716 (variation from a
18 prescription). Pharmacist-in-Charge Elizabeth Duc Tran, RPH 48237 dispensed Ziagen (generic
19 name: Abacavir) instead of Tenofovir (brand name: Viread), which had been prescribed. The
20 citation was issued without a fine and is now final.

21 b. On or about June 15, 2004, the Board of Pharmacy issued Citation No. CI
22 2003 27662 to Respondent Pharmacist-in-Charge Elizabeth Duc Tran, RPH 48237 for violating
23 California Code of Regulations, title 16, section 1716 (variation from a prescription).
24 Pharmacist-in-Charge Elizabeth Duc Tran, RPH 48237 dispensed Ziagen (generic name:
25 Abacavir) instead of Tenofovir (brand name: Viread), which had been prescribed. The citation
26 was issued with a fine in the amount of \$125.00 and is now final.

27 c. On or about May 4, 2006, the Board of Pharmacy issued Citation No.
28 CI 2005 30110 to Respondent Mission Community Pharmacy, Inc. dba Mission Pharmacy,

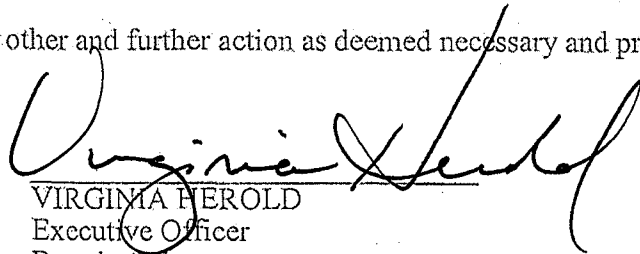
1 Permit No. PHY 46966, for violating Business and Professions Code section 4342 (actions by
2 Board to prevent sales of preparations of drugs lacking quality or strength) and Health & Safety
3 Code section 11165 (Controlled Substance Utilization Review and Evaluation System). On
4 December 22, 2005, while under the supervision of Pharmacist-In-Charge Theresa Van Truong,
5 RPH 50360, numerous expired drugs were found in the pharmacy's active stock, and the
6 electronic monitoring of schedule II prescriptions had not been transmitted as required. The
7 citation was issued with a fine in the amount of \$500.00 and is now final.

8 PRAYER

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

- 11 1. Revoking or suspending Pharmacy Permit No. PHY 46966, issued to
12 Respondent Mission Community Pharmacy, Inc. dba Mission Pharmacy, Permit No. PHY 46966.
- 13 2. Revoking or suspending Pharmacy Permit No. PHY 46317, issued to
14 Respondent Grodant Mission Pharmacy Corporation dba Mission Pharmacy, Permit No. PHY
15 46317.
- 16 3. Revoking or suspending Pharmacist License No. RPH 48237, issued to
17 Respondent Tran.
- 18 4. Ordering Respondent Mission Community Pharmacy, Inc. dba Mission
19 Pharmacy, Permit No. PHY 46966, Grodant Mission Pharmacy Corporation dba Mission
20 Pharmacy, PHY 46317 and Respondent Tran to pay the Board of Pharmacy the reasonable costs
21 of the investigation and enforcement of this case, pursuant to Code section 125.3;
- 22 5. Taking such other and further action as deemed necessary and proper.

23 DATED: 9/17/09



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

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