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11	In the Matter of the Accusation Against:	Case No. 3695
12	WALGREENS NO. 06683 5328 Cypress Avenue,	
13	VISALIA, CA 93277 Permit No. phy 46263	ACCUSATION
14	HANH LE PHAM	
15 16	13231 CHESTNUT ST. Westminster, CA 92683 Pharmacist License No. rph 55049	
17	Respondents.	
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19	Complainant alleges:	
20	P	ARTIES
21	1. Virginia Herold (Complainant) br	ings this Accusation solely in her official capacity
22	as the Executive Officer of the Board of Phar	macy, Department of Consumer Affairs.
23	2. On or about December 24, 2002,	the Board of Pharmacy issued Pharmacy Permit
24	Number PHY 46263 to Walgreens No. 06683	(Respondent Walgreens). The Pharmacy Permit
25	was in full force and effect at all times relevan	nt to the charges brought herein and will expire on
26	May 1, 2012, unless renewed.	
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		Accusation

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3. On or about August 29, 2003, the Board of Pharmacy issued Pharmacist License Number RPH 55049 to Hanh Le Pham (Respondent Pham). The license was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2013.

JURISDICTION

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

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5. Section 118 of the Code states, in pertinent part, as follows:

9 "(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
10 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
11 order of a court of law, or its surrender without the written consent of the board, shall not, during
12 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
13 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
14 provided by law or to enter an order suspending or revoking the license or otherwise taking
15 disciplinary action against the licensee on any such ground.

"(c) As used in this section, 'board' includes an individual who is authorized by any
provision of this code to issue, suspend, or revoke a license, and 'license' includes 'certificate,'
'registration,' and 'permit.'"

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Section 4300 of the Code states:

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

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

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

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

"(4) Revoking his or her license.

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

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

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7. Section 4301 of the Code states:

"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:

"(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.

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

"(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.

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Section 4022 of the Code states

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

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

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

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

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9. Section 4060 of the Code states:

"No person shall possess any controlled substance, except that furnished to a person upon 12 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor 13 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified 14 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a 15 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, 16 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of 17 18 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, 19 20 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly 21 labeled with the name and address of the supplier or producer. 22

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"Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a

physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and

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10. Section 4104 of the Code provides as follows:

(a) Every pharmacy shall have in place procedures for taking action to protect the public when a licensed individual employed by or with the pharmacy is discovered or known to be chemically, mentally, or physically impaired to the extent it affects his or her ability to practice the profession or occupation authorized by his or her license, or is discovered or known to have engaged in the theft, diversion, or self-use of dangerous drugs.

7 (b) Every pharmacy shall have written policies and procedures for addressing chemical,
8 mental, or physical impairment, as well as theft, diversion, or self-use of dangerous drugs, among
9 licensed individuals employed by or with the pharmacy.

(c) Every pharmacy shall report to the board, within 30 days of the receipt or development
of the following information with regard to any licensed individual employed by or with the
pharmacy:

(1) Any admission by a licensed individual of chemical, mental, or physical impairment
affecting his or her ability to practice.

15 (2) Any admission by a licensed individual of theft, diversion, or self-use of dangerous
16 drugs.

(3) Any video or documentary evidence demonstrating chemical, mental, or physical
impairment of a licensed individual to the extent it affects his or her ability to practice.

(4) Any video or documentary evidence demonstrating theft, diversion, or self-use of
dangerous drugs by a licensed individual.

(5) Any termination based on chemical, mental, or physical impairment of a licensed
individual to the extent it affects his or her ability to practice.

23 (6) Any termination of a licensed individual based on theft, diversion, or self-use of
24 dangerous drugs.

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11. California Code of Regulations, title 16, section 1714, subdivision (b) provides:
"(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and distributed."

1	12. California Code of Regulations, title 16, section 1715.6, provides:
2	"The owner shall report to the Board within thirty (30) days of discovery of any loss of the
3	controlled substances, including their amounts and strengths."
4	<u>COST RECOVERY</u>
5	13. Section 125.3 of the Code states, in pertinent part, that the Board may request the
6	administrative law judge to direct a licentiate found to have committed a violation or violations of
7	the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8	enforcement of the case.
9	<u>Drugs</u>
10	14. "Norco" is a compound consisting of 10 mg. of hydrocodone bitartrate, also known as
11	dihydrocodeinone, a Schedule III controlled substance as designated by Health & Safety Code
12	section 11056(e)(4), and 325 mg. acetaminophen per tablet.
13	15. "Vicodin" is a compound consisting of 5 mg. of hydrocodone bitartrate, also known
14	as dihydrocodeinone, a Schedule III controlled substance as designated by Health & Safety Code
15	section 11056(e)(4), and 500 mg. acetaminophen per tablet.
16	16. "Oxycodone" is a Schedule II controlled substance as designated by Health & Safety
17	Code section 11055(b)(1)(N).
18	FACTUAL BACKGROUND
19	17. In or around February or March 2008, Respondent Walgreens discovered that large
20	quantities of hydrocodone tablets, a controlled substance, were missing from the pharmacy. The
21	pharmacist-in-charge was told to conduct daily drug inventories. On or about March 5, 2008,
22	Walgreens loss prevention specialists conducted interviews of pharmacy employees regarding the
23	missing drugs. Two employees, Kao Hin Saechao and Isaac Campos, admitted to stealing
24	hydrocodone from the pharmacy and were subsequently terminated. Additionally, on or about
25	March 11, 2008, during an interview with Walgreens loss prevention specialists, another
26	pharmacy employee, Brittany Soares, admitted to diverting hydrocodone from the pharmacy and
27	was subsequently terminated. On or about March 12, 2008, a Walgreens Loss Prevention
28	Supervisor faxed the Board a one-page, hand-written notification that an unspecified controlled

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1	substance loss had occurred at Respondent Walgreens and that the loss was attributed to
2	"customer theft". No further information was timely provided to the Board as required by
3	Respondent Walgreens or by Respondent Pham, despite Respondent Pham's responsibility for
4	such reports. Moreover, during a discussion of the drug losses and required reporting,
5	Respondent Pham told the pharmacist-in-charge to stay out of things and to say nothing.
6	Subsequently, Respondent Walgreens discovered that approximately 23,277 tablets of
7	hydrocodone-containing medications and approximately 2,767 tablets of oxycodone were missing
8	and unaccounted for from the pharmacy. Walgreens identified the responsible persons on or
9	about March 5, 2008 and also identified an additional responsible person on or about March 11,
10	2008. On or about June 19, 2008, Walgreens first reported to the Board that the loss was
11	attributable to former employees of Walgreens #6683, that two former employees were arrested
12	on or about March 5, 2008, and one former employee was arrested on or about March 11, 2008.
13	Respondent Walgreens
14	FIRST CAUSE FOR DISCIPLINE
15	(Inadequate Pharmacy Security)
16	18. Respondent Walgreens is subject to disciplinary action for unprofessional conduct
17	under section 4301, subdivision (o) in that Respondent violated California Code of Regulations,
18	title 16, section 1714, subdivision (b). Respondent failed to maintain appropriate security against
19	theft or diversion of controlled substances. The circumstances demonstrating Respondent's
20	inadequate security are that between approximately December 2007 and March 2008,
21	approximately 23,277 tablets of medications containing hydrocodone, a controlled substance, and
22	approximately 2760 tablets of the controlled substance Oxycodone were stolen, diverted, or
23	otherwise became missing from the pharmacy
24	SECOND CAUSE FOR DISCIPLINE
25	(Failure to Report Losses)
26	19. Respondent Walgreens is subject to disciplinary action for unprofessional conduct
27	under section 4301, subdivision (o) in that Respondent violated California Code of Regulations,
28	title 16, section 1715.6. The circumstances are that after becoming aware of the theft, diversion
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	Accusation

1	and/or loss of the controlled substances hydrocodone and Oxycodone, as set forth above in
2	paragraph 18, Respondent failed to report those losses, including information regarding amounts
3	and strengths of the controlled substances, to the Board within 30 days of discovering the losses.
4	THIRD CAUSE FOR DISCIPLINE
5	(Failure to Report)
6	20. Respondent Walgreens is subject to disciplinary action for unprofessional conduct
7	under section 4301, subdivision (o) in that Respondent violated section 4104, subdivisions (c)(2),
8	(c)(4), and (c)(6). Despite having knowledge and information of the theft of controlled
9	substances through drug loss report evidence and loss prevention interviews with employees,
10	Respondent failed to report to the Board information regarding individuals employed by
11	Respondent Walgreens within 30 days of development or receipt of that information, including
12	information that pharmacy employees Kao Hin Saechao, Isaac Campos and Brittany Soares had
13	admitted to the theft of controlled substances (hydrocodone) from Respondent Walgreens and had
14	been terminated from employment based upon that theft.
15	Respondent Hanh Le Pham
16	FOURTH CAUSE FOR DISCIPLINE
17	(Failure to Report Losses)
18	21. Respondent Pham is subject to discipline for unprofessional conduct under
19	section 4301, subdivision (o), in that, while serving as District Manager for Respondent
20	Walgreens, Respondent Pham violated California Code of Regulations, title 16, section 1715.6.
21	The circumstances are that after becoming aware of the theft, diversion and/or loss of the
22	controlled substances hydrocodone and oxycodone, as set forth above in paragraph 18, and taking
23	responsibility for making the required reports, Respondent Pham failed to report those losses,
24	including information regarding amounts and strengths of the controlled substances, to the Board
25	within 30 days of discovering the losses.
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	Accusation

FIFTH CAUSE FOR DISCIPLINE

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(Failure to Report)

2	(Failure to Report)	
3	22. Respondent Pham is subject to discipline for unprofessional conduct under	
4	section 4301, subdivision (0), in that, while serving as District Manager for Respondent	
5	Walgreens, Respondent Pham violated section 4104, subdivisions (c)(2), (c)(4), and (c)(6). The	
6	circumstances are that after becoming aware of the theft, diversion and/or loss of the controlled	
7	substances hydrocodone and Oxycodone, as set forth above in paragraph 18, Respondent Pham	
8	was responsible for making the required reports, and instructed staff to stay out of things and say	
9	nothing, but nevertheless, failed to report to the Board information regarding the theft of	
10	controlled substances by individuals employed by Respondent Walgreens, within 30 days of	
11	development or receipt of that information, including information that pharmacy employees Kao	
12	Hin Saechao, Isaac Campos and Brittany Soares had admitted to the theft of controlled substances	
13	(hydrocodone) from Respondent Walgreens, that these employees had been terminated from	
14	employment based upon that theft, that they had been arrested by the Visalia Police, and were	
15	being prosecuted by the Tulare County District Attorney's Office.	
16	MATTERS IN AGGRIVATION	
17	In assessing the amount of discipline to be imposed, Complainant requests that the court	
18	take judicial notice of and consider the following:	
19	23. On or about March 19, 2008, Citation No. CI 2007 34657 was issued by the Board to	
20	Walgreens #6683 for violation of Business and Profession Code section 4005, 4301 (o), and 16	
21	CCR section 1775, for allowing non-licensed staff perform the duties of a pharmacy technician on	
22	or about October 31, 2007.	
23	24. On or about Novmeber 9, 2009, Citation No. CI 2008 39692 was issued by the Board	
24	to Walgreens #6683 for violation of Business and Profession Code section 4005, 4301 (o), and 16	
25	CCR section 1775, for a prescription error that occurred on or about December 19, 2008.	
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PRAYER WHEREPORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision: Revoking or suspending Pharmacy Permit Number PHY 46263, issued to Respondent Walgreens No. 06683 Ondering Respondent Walgreens and Respondent Hanh Le Pham 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 Anted Taking such other and further action as deemed necessary and proper. DATED: MARCHAR WRGININ HIROLD EvecutiveOfficer Board Of Pharmacy SA2010101162 10773821.dee 11 12 13 14 15 16		
and that following the hearing, the Board of Pharmacy issue a decision: 1. Revoking or suspending Pharmacy Permit Number PHY 46263, issued to Respondent Walgreens No. 06683 2. Revoking or suspending Pharmacist License Number RPH 55049, issued to Respondent Hanh Le Pham; 3. Ordering Respondent Walgreens and Respondent Hanh Le Pham 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 4. Taking such other and further action as deemed necessary and proper. DATED: 9/12/12 WRGINIA PIEROLD Executive officer Board of Pharmacy Board of Consumer Affairs State of California Complainant 16 17 SA2010101162 19773821.doe	1	PRAYER
4 1. Revoking or suspending Pharmacy Permit Number PHY 46263, issued to Respondent 5 Walgreens No. 06683 6 2. Revoking or suspending Pharmacist License Number RPH 55049, issued to 7 Respondent Hanh Le Pham; 8 3. Ordering Respondent Walgreens and Respondent Hanh Le Pham to pay the Board of 9 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to 10 Business and Professions Code section 125.3; and 11 4. Taking such other and further action as deemed necessary and proper. 12 DATED: 13 DATED: 14 Executive Officer 15 Bard of Pharmacy 16 Complainant 17 SA2010101162 19 Ortifical and an antice and antice action and antice action and antice action and a second active officer 18 Complainant 19 SA2010101162 10 Interm 162 10 Interm 162 10 Interm 102	2	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
S Walgreens No. 06683 2. Revoking or suspending Pharmacist License Number RPH 55049, issued to Respondent Hanh Le Pham; 3. 3 Ordering Respondent Walgreens and Respondent Hanh Le Pham to pay the Board of 9 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to 10 Business and Professions Code section 125.3; and 11 4. Taking such other and further action as deemed necessary and proper. 12 DATED: 1 13 DATED: 1 14 Executive Officer 15 Board of Pharmacy 16 Department of Consumer Affairs 17 SA2010101162 19 Ory73821.doe 20 Image: Second Se	3	and that following the hearing, the Board of Pharmacy issue a decision:
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7 Respondent Hanh Le Pham; 8 3. Ordering Respondent Walgreens and Respondent Hanh Le Pham to pay the Board of 9 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to 10 Business and Professions Code section 125.3; and 11 4. Taking such other and further action as deemed necessary and proper. 12 DATED: 13 Magnetic Control of Pharmacy 14 Pharmacy 15 Magnetic Control of Pharmacy 16 Executive Officer 17 SA2010101162 18 10773821.doe 19 Intervention of Consumer Affairs 21 State of California 22 Intervention of Consumer Affairs 23 Intervention officer 24 Intervention officer 25 Intervention officer 26 Intervention officer 27 Intervention officer 28 Intervention officer 29 Intervention officer 20 Intervention officer 21 Intervention officer 22 Interventinter	5	Walgreens No. 06683
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10 Business and Professions Code section 125.3; and 11 4. Taking such other and further action as deemed necessary and proper. 12 DATED: 9/22/2 13 WRGINIA/HEROLD 14 Board of Pharmacy 15 Department of Consumer Affairs 16 State of California 17 SA2010101162 19 10773821.doe 20 1 21 1 22 1 23 1 24 1 25 1 26 1 27 10	8	3. Ordering Respondent Walgreens and Respondent Hanh Le Pham to pay the Board of
11 4. Taking such other and further action as deemed necessary and proper. 12 DATED:	9	Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
12 DATED:	10	Business and Professions Code section 125.3; and
13 DATED:	11	4. Taking such other and further action as deemed necessary and proper.
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14 Board of Pharmacy Department of Consumer Affairs State of California Complainant 16 SA2010101162 17 SA2010101162 10 10	13	VIRGINIA HEROLD
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