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

11 In the Matter of the Accusation Against:

Case No. 5120

12 **TLC XPRESS PHARMACY INC.,**
13 **DBA TLC XPRESS PHARMACY**
14 **10810 Warner Avenue, Suite 3-4**
Fountain Valley, CA 92708

A C C U S A T I O N

15 **Pharmacy Permit No. PHY 49837**

16 **KEVIN NHATHUY QUANG TRAN**
17 **16436 Vernon Street**
Fountain Valley, CA 92708

18 **Pharmacist License No. RPH 56316**

19 Respondents.

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21
22 Complainant alleges:

23 **PARTIES**

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

26 2. On or about February 23, 2009, the Board of Pharmacy issued Pharmacy Permit
27 Number PHY 49837 to TLC Xpress Pharmacy Inc., doing business as TLC Xpress Pharmacy
28

1 (Respondent TLC Xpress Pharmacy). The Pharmacy Permit was in full force and effect at all
2 times relevant to the charges brought herein and will expire on February 1, 2015, unless renewed.

3 3. On or about September 24, 2004, the Board of Pharmacy issued Pharmacist License
4 Number RPH 56316 to Kevin Nhathuy Quang Tran (Respondent Kevin Tran). The Pharmacist
5 License was in full force and effect at all times relevant to the charges brought herein and will
6 expire on May 31, 2014, unless renewed.

7 JURISDICTION

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

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

14 6. Section 4300 (a) of the Code provides that every license issued by the Board may be
15 suspended or revoked.

16 7. Section 4300.1 of the Code states:

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

21 STATUTORY AND REGULATORY PROVISIONS

22 8. Section 4169 (a)(1) of the Code states:

23 A person may not do any of the following: Purchase, trade, sell, or transfer
24 dangerous drugs or dangerous devices at wholesale with a person or entity that is not
licensed with the board as a wholesaler.

25 9. Section 4301 of the Code states in pertinent part:

26 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
27 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
not limited to, any of the following:

28 ...

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

6 ...

7 10. Section 4113 (c) of the Code states:

8 The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state
9 and federal laws and regulations pertaining to the practice of pharmacy.

10 **COST RECOVERY**

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

15 **DRUGS**

16 12. Drugs utilized to treat Human Immunodeficiency Virus (HIV) and Acquired Immune
17 Deficiency Syndrome (AIDS) including, abilify, actos, aptripla, baraclude, combivar, complera,
18 epzicom, gleevec, intelence, isentress, kaletra, norvir, prevista, reyataz, truvada, viramune, viread
19 and ziagen. These are dangerous drugs pursuant to Business and Professions Code section 4022
20 and possess a high resale and street dollar value.

21 **FACTUAL ALLEGATIONS**

22 13. Since February 23, 2009 and at all times mentioned herein, Respondent Kevin Tran
23 was the Pharmacist-in-Charge of Respondent TLC Express Pharmacy.

24 14. On or about April 10 and May 18, 2012, AIDS Healthcare Foundation, a nonprofit
25 organization whose mission is to provide cutting edge medicine and advocacy for HIV and AIDS
26 patients, regardless of ability to pay, filed a complaint with the Board alleging that Rochester
27 Enterprises, Inc. was engaged in a scheme whereby it knowingly and willfully offered HIV and
28 AIDS patients cash and in-kind inducements (i.e., gift cards, rent and utility subsidies) to transfer
their prescriptions for AIDS drugs, many of which were paid for by Medicare and Medicaid to
Respondent TLC Express Pharmacy and Beverly Hills Medical Plaza Pharmacy.

1 15. The Board investigation revealed that Rochester Enterprises, Inc. operated a
2 "Confidential Patient Services" (CPS) program, whereby they solicited AIDS and HIV patients to
3 transfer their prescriptions for drugs to their pharmacies. Rochester Enterprises, Inc.'s website
4 stated that it used "[trained] case/social workers [to] give personal care to members" and
5 requested patients' full medical records as part of an agreement to purchase "healthcare products
6 or services" from Rochester Enterprises, Inc.

7 16. On or about April 27, 2012, Rochester Enterprises, Inc. was issued wholesale license
8 number WLS 5966 to sell dangerous drugs. Prior to that date, it was not licensed with the Board.

9 17. From April 2, 2012 through April 26, 2012, Respondents purchased dangerous drugs,
10 including drugs used for the treatment of AIDS and HIV, as described in paragraph 12, above,
11 from an unlicensed entity, Rochester Enterprises.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Purchasing Drugs from an Unlicensed Entity)**

14 18. Respondents are subject to disciplinary action under Code section 4301(o), for
15 violating Business and Professions Code section 4169(a)(1), in that they purchased dangerous
16 drugs, including drugs used for the treatment of AIDS and HIV, as set forth in paragraphs 13
17 through 17 above, which are incorporated herein by reference.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct)**

20 19. Respondents are subject to disciplinary action under Code section 4301 for
21 unprofessional conduct in that they engaged in the activities described in paragraphs 13 through
22 17 above, which are incorporated herein by reference.

23 **DISCIPLINARY CONSIDERATIONS**

24 20. To determine the degree of discipline, if any, to be imposed on Respondents,
25 Complainant alleges:

26 a. On February 27, 2012, the Board issued Citation number CI 2011 49875 against
27 Respondent TLC Xpress Pharmacy for violating Business and Professions Code sections
28

1 4126.5(a)(4) and 4081(a) for improperly furnishing drugs to a wholesaler and issued a fine.
2 Respondent subsequently entered into a stipulated settlement of the Citation.

3 b. On February 27, 2012, the Board issued Citation number CI 2011 51425 against
4 Respondent Kevin Tran for violating Business and Professions Code sections 4126.5(a)(4) and
5 4081(a) for improperly furnishing drugs to a wholesaler and issued a fine. Respondent
6 subsequently entered into a stipulated settlement of the Citation.

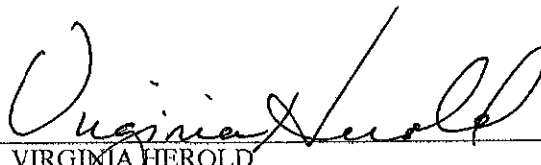
7 **PRAYER**

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

- 10 1. Revoking or suspending Pharmacy Permit Number PHY 49837, issued to TLC
11 Xpress Pharmacy Inc., dba TLC Xpress Pharmacy;
- 12 2. Revoking or suspending Pharmacist License Number RPH 56316, issued to Kevin
13 Nhathuy Quang Tran;
- 14 3. Ordering TLC Xpress Pharmacy Inc., dba TLC Xpress Pharmacy and Kevin Nhathuy
15 Quang Tran to pay the Board of Pharmacy the reasonable costs of the investigation and
16 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 17 4. Taking such other and further action as deemed necessary and proper.
- 18
19

20 DATED: _____

9/28/14



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

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