

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
Deputy Attorney General
4 State Bar No. 126461
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2996
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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. 5413

12 **OPTUMRX INC., DBA OPTUMRX**
13 **2858 Loker Avenue East, Ste. 100**
Carlsbad, CA 92010

A C C U S A T I O N

14 **Pharmacy Permit No. PHY 47482**

15 **PHONG QUOC LY**
16 **2858 Loker Ave East, Ste. 100**
Carlsbad, CA 92010

17 **Pharmacist License No. RPH 51836**

18 Respondents.
19

20
21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about March 22, 2006, the Board of Pharmacy issued Pharmacy Permit
26 Number PHY 47482 to OptumRx Inc., doing business as OptumRx (Respondent OptumRx). The
27 Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein
28 and will expire on March 1, 2017, unless renewed.

1 3. On or about August 30, 2000, the Board of Pharmacy issued Pharmacist License
2 Number RPH 51836 to Phong Quoc Ly (Respondent Phong Ly). The Pharmacist License was in
3 full force and effect at all times relevant to the charges brought herein and will expire on
4 November 30, 2017, unless renewed.

5 JURISDICTION

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

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

12 6. Section 4113(c) of the Code states:

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

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

17 8. Section 4300.1 of the Code states:

18 The expiration, cancellation, forfeiture, or suspension of a board-issued license
19 by operation of law or by order or decision of the board or a court of law, the
20 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
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 9. Section 733(a) states:

23 A licentiate shall not obstruct a patient in obtaining a prescription drug or
24 device that has been legally prescribed or ordered for that patient. A violation of this
section constitutes unprofessional conduct by the licentiate and shall subject the
25 licentiate to disciplinary or administrative action by his or her licensing agency.

26 10. Section 4301 of the Code states in pertinent part:

27 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
28 not limited to, any of the following:

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

7 COST RECOVERY

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

12 DRUGS

13 12. Atripla is the brand name for a combination of the generic drugs, efavirenz,
14 emtricitabine and tenofovir and is a dangerous drug pursuant to Business and Professions Code
15 section 4022. It is utilized to treat Human Immunodeficiency Virus (HIV) and Acquired Immune
16 Deficiency Syndrome (AIDS).

17 13. Lipitor is the brand name for atorvastatin and is a dangerous drug pursuant to
18 Business and Professions Code section 4022. It is utilized to treat hypercholesteremia.

19 14. Singulair is the brand name for montelukast and is a dangerous drug pursuant to
20 Business and Professions Code section 4022. It is utilized to treat asthma and prevent allergy
21 symptoms.

22 15. Zetia is the brand name for ezetimibe and is a dangerous drug pursuant to Business
23 and Professions Code section 4022. It is utilized to treat hypercholesteremia.

24 FACTUAL ALLEGATIONS

25 16. At all relevant times herein, Respondent dispensed prescription drugs to patients via
26 mail or overnight delivery services. From February 20, 2012 through the present, Respondent
27 Phong Ly was the Pharmacist-in-Charge of Respondent OptumRx.
28

1 **Patient Christopher O.**

2 17. On or about August 23, 2013, Dr. Timothy A. prescribed Atripla 600 mg-200 mg-300
3 mg with the instructions to take one tablet per day, in a quantity of 30 for a 30 day supply with 11
4 refills to patient Christopher O. On or about March 19, 2014, patient Christopher O. ordered a
5 refill of Prescription Number 100407835, Atripla, 600 mg-200 mg-300 mg tablets in a quantity of
6 30 tablets for a 30 day supply, from Respondents who informed him that he would receive his
7 refill on March 21, 2014. Respondents did not furnish the refill for Atripla on March 21, 2014.
8 Instead, Respondents initiated the dispensing process for a refill order in the quantity of 90 tablets
9 for a 90 day supply which caused the order to be placed on hold for prior insurance authorization.
10 Respondents then cancelled the refill order.

11 18. On March 21, 2014, patient Christopher O. contacted Respondents to inquire about
12 the status of his refill. Respondents informed him that his refill would be delivered to him on
13 March 24, 2014. However, Respondents did not dispense or furnish the refill on March 24, 2014,
14 resulting in a delay in the furnishing of a drug which the patient needed to take every day.
15 Instead, the prescription was delivered on March 25, 2014.

16 **Patient Suzanne S.**

17 19. On or about May 23, 2014, Dr. Christopher M. prescribed 90 tablets of Zetia with
18 directions to take 1 tablet daily with 3 additional refills. On or about August 19, 2014, patient
19 Suzanne S. requested a refill of her prescription for Zetia 10 mg from Respondent. On the order
20 form, she requested that the medication be delivered to an alternate address. Respondents
21 processed her order and charged her credit card shortly thereafter. Suzanne S. did not receive her
22 medication.

23 20. On August 30, 2014, Suzanne S. contacted Respondents to inquire about the status of
24 her medication. She was informed that her medication had not been sent to her alternative
25 address and that her medication would be reshipped to her. Suzanne S. did not receive her
26 medication.

27 21. On September 9, 2014, Suzanne S.'s husband contacted Respondents again to inquire
28 about the status of her medication. He was informed that another error had occurred and her

1 medication had not shipped. He was promised that it would be shipped via an overnight delivery
2 service and delivered by September 10 or 11, 2014. Suzanne S. did not receive her medication.

3 22. On September 12, 2014, Suzanne S.'s husband contacted Respondents. He was
4 informed that Respondents would attempt to arrange for the medication to be delivered
5 expeditiously on a Saturday and that an individual from "corporate" would contact her regarding
6 her medication within 24 hours. Suzanne S. did not receive her medication nor did anyone from
7 "corporate" contact her.

8 23. On September 13, 2014, Suzanne S.'s husband received a telephone call from
9 Respondents who told her that her medication would be shipped possibly on September 15, 2014.
10 On September 16, 2014, Suzanne S. received her medication from Respondents.

11 **Patient Jody M.**

12 24. On January 30, 2015, patient Jody M. requested that Respondents obtain a new
13 prescription for Lipitor 40mg from her physician, Dr. Anna S. Respondents did not receive a
14 response from Dr. Anna S to their request for a new prescription. On February 16, 2016, Jody M.
15 contacted Respondents to inquire about the status of her medication. She was informed that her
16 physician did not respond to the request for a new prescription. On February 17, 2015, she
17 contacted Respondents to request that another request for the new prescription be sent to Dr.
18 Anna S. Respondents' pharmacy clerk told Jody M. that another request would be sent to Dr.
19 Anna S. However, it was not sent to Dr. Anna S. nor was Jody M advised of the status of her
20 medication.

21 25. On February 24, 2015, Jody M. contacted Respondents because she had not received
22 her medication. Respondents issued yet another new prescription request to Dr. Anna S. On
23 February 27, 2015, Jody M. received her medication from Respondents.

24 **Patient Anne M.**

25 26. On February 9, 2015, patient Anne M.'s physician, Dr. Kevin B. transmitted a
26 prescription for Singulair 10mg to Respondents. On February 10, 2015, Anne M. contacted
27 Respondents to confirm that they had received the prescription for Singulair. She was told they
28 had received it and her medication would ship shortly. Anne M. did not receive her medication.

1 d. On July 9, 2014, the Board issued Citation number CI 2013 59891 against
2 Respondent OptumRx for violating Business and Professions Code section 733(a) in that it
3 obstructed the dispensing of prescription drugs.

4 e. On January 23, 2014, the Board issued Citation number CI 2012 54362 against
5 Respondent OptumRx for violating Business and Professions Code section 733(a) in that it
6 obstructed the dispensing of prescription drugs and devices and California Code of Regulations,
7 title 16, section 1716 for deviating from the requirements of a prescription without the prior
8 consent of the prescriber. The Board issued a fine which Respondent OptumRx paid.

9 f. On April 11, 2014, the Board issued Citation number CI 2013 60829 against
10 Respondent Phong Ly for violating Civil Code section 56.10(a) and California Code of
11 Regulations, title 16, section 1764 in that there was the unauthorized release of protected
12 healthcare information.

13 g. On April 11, 2014, the Board issued Citation number CI 2013 58107 against
14 Respondent OptumRx for violating Civil Code section 56.10(a) and California Code of
15 Regulations, title 16, section 1764 in that there was the unauthorized release of protected
16 healthcare information. The Board issued a fine which Respondent OptumRx paid.

17 h. On July 9, 2014, the Board issued Citation number CI 2013 59891 against
18 Respondent OptumRx for violating Business and Professions Code section 733(a) in that it
19 obstructed the dispensing of prescription drugs. The Board issued a fine which Respondent
20 OptumRx paid.

21 i. On February 14, 2013, the Board issued Citation number CI 2012 53121
22 against Respondent OptumRx for violating California Code of Regulations, title 16, section 1716
23 in that it dispensed a prescription without clarifying the dose with the prescriber. The Board
24 issued a fine which Respondent OptumRx paid.

25 j. On November 15, 2013, the Board issued Citation number CI 2012 56693
26 against Respondent OptumRx for violating Business and Professions Code section 733(a) in that
27 it obstructed the dispensing of prescription drugs. The Board issued a fine which Respondent
28 OptumRx paid.

1 k. On November 15, 2013, the Board issued Citation number CI 2013 58709
2 against Respondent Phong Ly for violating Business and Professions Code section 733(a) in that
3 she obstructed the dispensing of prescription drugs. The Board issued a fine which Respondent
4 Phong Ly paid.

5 1. On September 11, 2013, the Board issued Citation number CI 2012 54430
6 against Respondent OptumRx for violating California Code of Regulations, title 16, section 1716
7 in that it deviated from the requirements of a prescription without the prior consent of the
8 prescriber.

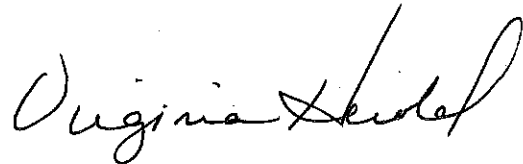
9 **PRAYER**

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

- 12 1. Revoking or suspending Pharmacy Permit Number PHY 47482, issued to OptumRx
13 Inc., doing business as OptumRx;
- 14 2. Revoking or suspending Pharmacist License Number RPH 51836, issued to Phong
15 Quoc Ly;
- 16 3. Ordering OptumRx Inc., doing business as OptumRX and Phong Quoc Ly to pay the
17 Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
18 pursuant to Business and Professions Code section 125.3;
- 19 4. Taking such other and further action as deemed necessary and proper.
- 20
21

22
23 DATED: _____

3/18/16



24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

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