

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

10 In the Matter of the Statement of Issues Against:
11 **TOTALRX PHARMACY, INC.**
12 **Bickie Phan, President, Pharmacist in Charge**
13 **Applicant for Community Pharmacy License**
14 Respondent.

Case No. 4292

STATEMENT OF ISSUES

15 Complainant alleges:

16 PARTIES

- 17 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
18 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
19 2. On or about September 1, 2011, the Board of Pharmacy, Department of Consumer
20 Affairs received Community Pharmacy Permit Application (License Application) from TotalRX
21 Pharmacy, Inc., Bickie Phan, President, Pharmacist in Charge (Respondent). On or about August
22 25, 2011, Bickie Phan, President, certified under penalty of perjury as to the truthfulness of all
23 statements, answers, and representations in the License Application.

24 JURISDICTION

- 25 3. This Statement of Issues is brought before the Board of Pharmacy (Board),
26 Department of Consumer Affairs, under the authority of the following laws. All section
27 references are to the Business and Professions Code (Code) unless otherwise indicated.

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STATUTORY AND REGULATORY PROVISIONS

4. Section 4300, subdivision (c), of the Code states:

“(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy”

5. Section 4301 of the Code provides, in pertinent part, that “unprofessional conduct” is defined to include, but not be 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.

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

(j) The violation of any of the statutes of this state, of 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 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.

6. Section 480 of the Code provides, in pertinent part, that

(a) A board may deny a license regulated by this code on the grounds that the applicant has:
(1) been convicted of a crime; (2) done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or (3) done any act which if done by a licensee would be grounds for suspension or revocation, so long as the crime or act is substantially related to the qualifications, functions or duties of the license.

. . .

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application.

1 7. California Code of Regulations, title 16, section 1770, states:

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

8 8. Section 4113, subdivision (c), of the Code provides that the pharmacist in charge
9 shall be responsible for a pharmacy’s compliance with all state and federal laws and regulations
10 pertaining to the practice of pharmacy.

11 9. Section 4081 of the Code provides, in pertinent part, that all records of manufacture,
12 sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be kept open to
13 inspection and retained for at least three years, that a current inventory shall be kept by every
14 pharmacy that maintains a stock of dangerous drugs or dangerous devices, and that the owner(s),
15 officer(s), partner(s), and pharmacist in charge or designated representative in charge shall be
16 jointly responsible for maintaining the records and keeping the inventory.

17 10. Section 4105 of the Code requires, in pertinent part, that unless a waiver is granted by
18 the board, all records and other documentation of the acquisition and disposition of dangerous
19 drugs and devices by any entity licensed by the board be retained on the licensed premises, in a
20 readily retrievable form, for three years from the date of making.

21 8. Section 4332 of the Code makes it unlawful for any person: to fail, neglect, or refuse
22 to maintain the records required by Section 4081; or, when called upon by an authorized officer
23 or a member of the board, to fail, neglect, or refuse to produce or provide the records within a
24 reasonable time; or to willfully produce or furnish records that are false.

25 11. Section 4306.5, subdivision (a), of the Code provides that unprofessional conduct for
26 a pharmacist may also include inappropriate exercise of education, training, or experience.

27 12. California Code of Regulations, title 16, section 1714, states in pertinent part:
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1 (b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and
2 equipment so that drugs are safely and properly prepared, maintained, secured and distributed.

3 (d) Each pharmacist while on duty shall be responsible for the security of the prescription
4 department, including provisions for effective control against theft or diversion of dangerous
5 drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy
6 where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

7 (e) The pharmacy owner, the building owner or manager, or a family member of a
8 pharmacist owner (but not more than one of the aforementioned) may possess a key to the
9 pharmacy that is maintained in a tamper evident container for the purpose of 1) delivering the key
10 to a pharmacist or 2) providing access in case of emergency.

11 13. California Code of Regulations, title 16, section 1718, provides, in pertinent part, that
12 "current inventory" as used in sections 4081 and 4332 of the Code means complete accountability
13 for all dangerous drugs handled by every licensee enumerated in sections 4081 and 4332.

14 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

15 14. Section 4021 of the Code states:

16 "Controlled substance' means any substance listed in Chapter 2 (commencing with Section
17 11053) of Division 10 of the Health and Safety Code."

18 15. Section 4022 of the Code states, in pertinent part:

19 "Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use,
20 except veterinary drugs that are labeled as such, and includes the following:

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

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

25 16. **Hydrocodone** is a Schedule III controlled substance as designated by Health and
26 Safety Code section 11056(e)(4) and dangerous drug as designated by Business and Professions
27 Code section 4022. narcotic drug.

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1 FACTUAL BACKGROUND

2 17. On or about March 10, 2005, the Board of Pharmacy, Department of Consumer
3 Affairs, issued Pharmacist License No. RPH 56791 to Bickie Hoang Phan (Ms. Phan). That
4 License is in full force and effect and will expire on November 30, 2012, unless renewed.

5 18. From in or about January 2008 until at least March 18, 2009, Ms. Phan was employed
6 as a pharmacist and the Pharmacist in Charge at Colima Pharmacy located in Rowland Heights,
7 California. That pharmacy was the subject of an investigation conducted by the federal Drug
8 Enforcement Agency (DEA) regarding large and/or unexplained purchases of **hydrocodone**
9 between at least in or about December 2006 and in or about March 2008.

10 19. As part of the investigation, Ms. Phan was interviewed by the DEA on at least two (2)
11 occasions in or about February 2009 and March 2009. During the course of those interviews, Ms.
12 Phan made statements or reviewed documents that revealed or confirmed the following:

13 a. Ms. Phan had been employed at Colima Pharmacy, as the Pharmacist in Charge
14 and primary or sole dispensing pharmacist since on or about January 2, 2008;

15 b. Ms. Phan admitted that at least two (2) non-pharmacist personnel had keys to
16 the pharmacy where the dangerous drugs or controlled substances were stored, that were not kept
17 in a tamper-evident container solely for delivery to a pharmacist or for use in an emergency;

18 c. Ms. Phan was ostensibly in charge of placing drug orders with the wholesaler(s)
19 that supplied Colima Pharmacy, but admitted that she was not the only one with access to and/or
20 knowledge of the account(s) and password(s) needed for placing orders, that she never changed
21 the password(s) that were given to her for placing orders, and that for at least one wholesaler the
22 account and password information was kept openly accessible next to the computer;

23 d. Ms. Phan admitted that orders placed with the wholesaler(s) for large quantities
24 of **hydrocodone** on March 17 and March 19, 2008 were not placed by her, that the pharmacy did
25 not use quantities of **hydrocodone** that large for filling prescriptions, and that there would not be
26 room in the pharmacy's dedicated cabinet(s) to store those quantities of controlled substances;

27 e. Ms. Phan said there were "lots of people" in the pharmacy at that time that may
28 have been responsible for placing the orders, but she could not identify who actually did so;

1 f. Ms. Phan admitted that the wholesaler(s) called her about the large orders, and
2 that a fellow employee began to cry when Ms. Phan asked her about the orders, but she dismissed
3 the inquiry about the orders as a “mistake” on the part of the wholesaler(s) because she never saw
4 the **hydrocodone** arrive in the pharmacy or saw the invoices she was shown by the DEA, so she
5 never called the wholesaler back or followed up with the owner(s) of the pharmacy;

6 g. Ms. Phan admitted to having suspicions that one of the “lots of people” that she
7 noticed in the pharmacy during March 2008 might be selling **hydrocodone** or other drug(s), but
8 said she did not follow up on or investigate those suspicions;

9 h. There were numerous invoices showing orders of controlled substances by the
10 pharmacy that Ms. Phan admitted she did not place and/or did not recognize;

11 i. When asked about documents showing that at least 68,000 **hydrocodone** tablets
12 were ordered that were not reflected on the pharmacy’s dispensing record(s), Ms. Phan admitted
13 that the **hydrocodone** were not in the inventory, and their whereabouts were unknown;

14 j. Ms. Phan admitted that she had agreed that paperwork submitted by the uncle
15 of the owner of Colima Pharmacy, a man whose name she did not know, for a pharmacy license
16 to run Boyle Heights Medical Pharmacy in Los Angeles, could list her as Pharmacist in Charge;

17 k. Ms. Phan admitted that she did not know whether operations had commenced at
18 Boyle Heights Medical Pharmacy, or whether the pharmacy was placing drug orders;

19 l. At the request of the DEA, Ms. Phan placed a recorded call to a subject of their
20 investigation, one of the owners of Colima Pharmacy, in which she asked him about the orders of
21 **hydrocodone** that were placed in March 2008, and who might have placed them;

22 m. Ms. Phan agreed to place additional recorded calls to this subject, but then later
23 changed her mind and declined to place any more calls;

24 n. Ms. Phan then informed the subject about the ongoing DEA investigation.

25 20. Among the materials submitted by Respondent as part of the Community Pharmacy
26 Permit Application is an Individual Personal Affidavit (Affidavit) signed by Ms. Phan, which she
27 signed on or about August 25, 2011, certifying under penalty of perjury as to the truthfulness of
28 all statements, answers, and representations made in the Affidavit.

1 21. The final section of the Affidavit asks Ms. Phan to list and describe “Current and past
2 employment for the past five years. (Use additional sheets if necessary).” In that section, Ms.
3 Phan listed employment as a pharmacist at Boyle Heights Pharmacy in Los Angeles from January
4 1, 2007 to October 30, 2011. She did not list any other employment, including her employment at
5 Colima Pharmacy from in or around January 2008 until at least on or about March 18, 2009.

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7 FIRST CAUSE FOR DENIAL OF APPLICATION

8 (Dishonesty, Fraud, Deceit, or Corruption; False Document(s))

9 22. Respondent’s application is subject to denial under the following section(s) of the
10 Code: 480(a)(2); 480(a)(3) by reference to 4301(f) and/or (g); and/or 4300(c) by reference to
11 4301(f) and/or (g), in that Respondent, as described in paragraphs 17-21 above, did acts involving
12 dishonesty, fraud or deceit with intent to substantially benefit herself or another, or substantially
13 injure another, did acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, and/or
14 knowingly made or signed document(s) falsely representing the existence/nonexistence of facts.

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16 SECOND CAUSE FOR DENIAL OF APPLICATION

17 (Incomplete Inventory and/or Records of Disposition)

18 23. Respondent’s application is subject to denial under the following section(s) of the
19 Code: 480(a)(2); 480(a)(3) by reference to 4301(j), (o), 4113(c), 4081, 4105, and/or 4332, and/or
20 California Code of Regulations, title 16, section 1718; and/or 4300(c) by reference to 4301(j), (o),
21 4113(c), 4081, 4105, and/or 4332, and/or California Code of Regulations, title 16, section 1718,
22 in that Respondent, as described in paragraphs 17-21 above, violated statutes regulating
23 controlled substances and dangerous drugs, violated, attempted to violate, or assisted in or abetted
24 violation of laws or regulations governing the practice of pharmacy, or in her role as Pharmacist
25 in Charge was responsible for violations of laws or regulations by Colima Pharmacy, in that the
26 inventory and/or records of disposition maintained at Colima Pharmacy were incomplete.

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THIRD CAUSE FOR DENIAL OF APPLICATION

(Inadequate Pharmacy Security)

24. Respondent's application is subject to denial under the following section(s) of the Code: 480(a)(2); 480(a)(3) by reference to 4301(j), (o), 4113(c), and/or California Code of Regulations, title 16, section 1714; and/or 4300(c) by reference to 4301(j), (o), 4113(c), and/or California Code of Regulations, title 16, section 1714, in that Respondent, as described in paragraphs 17-21 above, violated statutes regulating controlled substances and dangerous drugs, violated, attempted to violate, or assisted in or abetted violation of laws or regulations governing the practice of pharmacy, or in her role as Pharmacist in Charge was responsible for violations of laws or regulations by Colima Pharmacy, in that Colima had inadequate pharmacy security.

FOURTH CAUSE FOR DENIAL OF APPLICATION

(False Statement(s) of Fact on Application)

25. Respondent's application is subject to denial under section 480(c) of the Code in that, as described in paragraphs 17-21 above, Respondent made false statement(s) of fact in the application, including the omission of her employment at Colima Pharmacy from the Affidavit.

FIFTH CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct)

26. Respondent's application is subject to denial under section 480(a)(3) by reference to section 4301 and/or section 4300(c) by reference to section 4301, in that, as described in paragraphs 17-25 above, Respondent engaged in unprofessional conduct.

SIXTH CAUSE FOR DENIAL OF APPLICATION

(Misuse of Training, Education or Experience)

27. Respondent's application is subject to denial under section 480(a)(3) by reference to section 4306.5(a) and/or section 4300(c) by reference to section 4306.5(a), in that, as described in paragraphs 17-25 above, Respondent misused her education, training, or experience.

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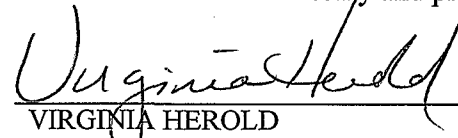
PRAYER

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

1. Denying the application from TotalRX Pharmacy, Inc., Bickie Phan, President, Pharmacist in Charge (Respondent) to be a Community Pharmacy;

2. Taking such other and further action as is deemed necessary and proper.

DATED: 4/2/12



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

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