

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

NOELLE DOAN BUI
10805 Howard Dallies Cir.
Garden Grove, CA 92843

Pharmacist License No. RPH 53005

Respondent.

Case No. 3137

OAH No. 2008090764

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on May 8, 2009.

It is so ORDERED on April 8, 2009.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



KENNETH H. SCHELL
Board President

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 HEATHER HUA, State Bar No. 223418
Deputy Attorney General
4 300 So. Spring Street, Suite 1702
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7 Attorneys for Complainant

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

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14 Pharmacist License No. RPH 53005

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**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15
16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
18 above-entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Virginia Herold (Complainant) is the Executive Officer of the Board of
21 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
22 by Edmund G. Brown Jr., Attorney General of the State of California, and by Heather Hua,
23 Deputy Attorney General.

24 2. Noelle Doan Bui (Respondent) is represented in this proceeding by
25 attorney Peter R. Osinoff, whose address is 3699 Wilshire Boulevard, 10th Floor, Los Angeles,
26 CA 90010-2719.

27 3. On or about September 21, 2001, the Board of Pharmacy issued
28 Pharmacist License No. RPH 53005 to Respondent. The Pharmacist License was in full force

1 and effect at all times relevant to the charges brought in Accusation No. 3137 and will expire on
2 January 31, 2009, unless renewed.

3 **JURISDICTION**

4 4. Accusation No. 3137 was filed before the Board of Pharmacy (Board),
5 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
6 and all other statutorily required documents were properly served on Respondent on August 27,
7 2008. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of
8 Accusation No. 3137 is attached as exhibit A and incorporated herein by reference.

9 **ADVISEMENT AND WAIVERS**

10 5. Respondent has carefully read, fully discussed with counsel, and
11 understands the charges and allegations in Accusation No. 3137. Respondent has also carefully
12 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and
13 Disciplinary Order.

14 6. Respondent is fully aware of her legal rights in this matter, including the
15 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
16 counsel at her own expense; the right to confront and cross-examine the witnesses against her;
17 the right to present evidence and to testify on her own behalf; the right to the issuance of
18 subpoenas to compel the attendance of witnesses and the production of documents; the right to
19 reconsideration and court review of an adverse decision; and all other rights accorded by the
20 California Administrative Procedure Act and other applicable laws.

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
22 each and every right set forth above.

23 **CULPABILITY**

24 8. Respondent admits the truth of each and every charge and allegation in
25 Accusation No. 3137.

26 9. Respondent agrees that her Pharmacist License is subject to discipline and
27 she agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary
28 Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacist License No. RPH 53005 issued to Respondent is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. **Obey All Laws.** Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

Respondent shall report any of the following occurrences to the Board, in writing, within 72 hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws

- 1 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to
- 2 any criminal complaint, information or indictment
- 3 • a conviction of any crime
- 4 • discipline, citation, or other administrative action filed by any state and federal
- 5 agency which involves Respondent's license or which is related to the practice
- 6 of pharmacy or the manufacturing, obtaining, handling or distribution or billing
- 7 or charging for any drug, device or controlled substance.

8 2. **Reporting to the Board.** Respondent shall report to the Board
9 quarterly. The report shall be made either in person or in writing, as directed. Respondent
10 shall state under penalty of perjury whether there has been compliance with all the terms and
11 conditions of probation. If the final probation report is **not** made as directed, probation shall
12 be extended automatically until such time as the final report is made and accepted by the
13 Board.

14 3. **Interview with the Board.** Upon receipt of reasonable notice,
15 Respondent shall appear in person for interviews with the Board upon request at various
16 intervals at a location to be determined by the Board. Failure to appear for a scheduled
17 interview without prior notification to Board staff shall be considered a violation of probation.

18 4. **Cooperation with Board Staff.** Respondent shall cooperate with the
19 Board's inspection program and in the Board's monitoring and investigation of Respondent's
20 compliance with the terms and conditions of her probation. Failure to comply shall be
21 considered a violation of probation.

22 5. **Continuing Education.** Respondent shall provide evidence of efforts
23 to maintain skill and knowledge as a pharmacist as directed by the Board.

24 6. **Notice to Employers.** Respondent shall notify all present and
25 prospective employers of the decision in case number 3137 and the terms, conditions and
26 restrictions imposed on Respondent by the decision. Within 30 days of the effective date of
27 this decision, and within 15 days of Respondent undertaking new employment, Respondent
28 shall cause her direct supervisor, pharmacist-in-charge and/or owner to report to the Board in

1 writing acknowledging the employer has read the decision in case number 3137.

2 If Respondent works for or is employed by or through a pharmacy employment
3 service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at
4 every pharmacy of the terms and conditions of the decision in case number 3137 in advance of
5 the Respondent commencing work at each pharmacy.

6 "Employment" within the meaning of this provision shall include any full-time, part-
7 time, temporary, relief or pharmacy management service as a pharmacist, whether the
8 Respondent is considered an employee or independent contractor.

9 **7. Reimbursement of Board Costs.** Respondent shall pay to the Board
10 its costs of investigation in the amount of \$1,550.00 and legal fees in the amount of \$2,500.
11 Therefore, total cost recovery is in the amount of **\$4,050.00**. Respondent shall make said
12 payments as follows: monthly payments during the first two years of probation. If Respondent
13 fails to pay the costs as directed by the Board and on the date(s) determined by the Board,
14 probation shall be automatically extended until such time that all costs are paid in full.

15 The filing of bankruptcy by Respondent shall not relieve Respondent of her
16 responsibility to reimburse the Board its costs of investigation and prosecution.

17 **8. Probation Monitoring Costs.** Respondent shall pay the costs
18 associated with probation monitoring as determined by the Board each and every year of
19 probation. Such costs shall be payable to the Board at the end of each year of probation.
20 Failure to pay such costs shall be considered a violation of probation.

21 **9. Status of License.** Respondent shall, at all times while on probation,
22 maintain an active current license with the Board, including any period during which
23 suspension or probation is tolled.

24 If Respondent's license expires or is cancelled by operation of law or otherwise,
25 upon renewal or re-application, Respondent's license shall be subject to all terms and
26 conditions of this probation not previously satisfied.

27 **10. License Surrender while on Probation/Suspension.** Following the
28 effective date of this decision, should Respondent cease practice due to retirement or health,

1 or be otherwise unable to satisfy the terms and conditions of probation, Respondent may
2 tender her license to the Board for surrender. The Board shall have the discretion whether to
3 grant the request for surrender or take any other action it deems appropriate and reasonable.
4 Upon formal acceptance of the surrender of the license, Respondent will no longer be subject
5 to the terms and conditions of probation.

6 Upon acceptance of the surrender, Respondent shall relinquish her pocket
7 license to the Board within 10 days of notification by the Board that the surrender is accepted.
8 Respondent may not reapply for any license from the Board for three years from the effective
9 date of the surrender. Respondent shall meet all requirements applicable to the license sought
10 as of the date the application for that license is submitted to the Board.

11 **11. Notification of Employment/Mailing Address Change.** Respondent
12 shall notify the Board in writing within 10 days of any change of employment. Said
13 notification shall include the reasons for leaving and/or the address of the new employer,
14 supervisor or owner and work schedule if known. Respondent shall notify the Board in
15 writing within 10 days of a change in name, mailing address or phone number.

16 **12. Violation of Probation.** If Respondent violates probation in any
17 respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke
18 probation and carry out the disciplinary order which was stayed. If a petition to revoke
19 probation or an accusation is filed against Respondent during probation, the Board shall have
20 continuing jurisdiction and the period of probation shall be extended, until the petition to
21 revoke probation or accusation is heard and decided.

22 If Respondent has not complied with any term or condition of probation, the
23 Board shall have continuing jurisdiction over Respondent, and probation shall automatically
24 be extended until all terms and conditions have been satisfied or the Board has taken other
25 action as deemed appropriate to treat the failure to comply as a violation of probation, to
26 terminate probation, and to impose the penalty which was stayed.

27 **13. Completion of Probation.** Upon successful completion of probation,
28 Respondent's license will be fully restored.

1 Respondent's license will be fully restored.

2 14. **Community Services Program.** Within 60 days of the effective date
3 of this decision, Respondent shall submit to the Board, for its prior approval, a community
4 service program in which Respondent shall provide free health-care related services on a
5 regular basis to a community or charitable facility or agency for at least 200 hours during the
6 first two years of probation.

7 15. **Ethics Course.** Within sixty (60) calendar days of the effective date of
8 this decision, Respondent shall enroll in a course in ethics, at Respondent's expense, approved
9 in advance by the Board or its designee. Failure to initiate the course during the first year of
10 probation, and complete it within the second year of probation, is a violation of probation.
11 Respondent shall submit a certificate of completion to the Board or its designee within five
12 days afer completing the course.

13 16. **No Ownership of Premises.** Respondent shall not own, have any legal
14 or beneficial interest in, or serve as a manager, administrator, member, officer, director,
15 associate, or partner of any business, firm, partnership, or corporation currently or hereinafter
16 licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any
17 entity licensed by the Board within 90 days following the effective date of this decision and
18 shall immediately thereafter provide written proof thereof to the Board.

19 ACCEPTANCE

20 I have carefully read the above Stipulated Settlement and Disciplinary Order
21 and have fully discussed it with my attorney, Peter R. Osinoff. I understand the stipulation
22 and the effect it will have on my Pharmacist License No. RPH 53005. I enter into this
23 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and
24 agree to be bound by the Decision and Order of the Board of Pharmacy.

25 DATED: 12/2/08

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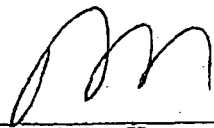


NOELLE DOAN BUI
Respondent

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I have read and fully discussed with Respondent Noelle Doan Bui the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 12/2/08



Peter Osinoff
Attorney for Respondent

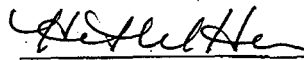
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: December 15, 2008

EDMUND G. BROWN JR., Attorney General
of the State of California

MARC D. GREENBAUM
Supervising Deputy Attorney General



HEATHER HUA
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: LA2008600121
60345002.wpd

Exhibit A
Accusation No. 3137

1 EDMUND G. BROWN JR., Attorney General
of the State of California
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6 Attorneys for Complainant

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9 **DEPARTMENT OF CONSUMER AFFAIRS**
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10 In the Matter of the Accusation Against:

Case No. 3137

11 NOELLE DOAN BUI
12 10805 Howard Dallies Cir.
Garden Grove, CA 92843
13 Pharmacist License No. RPH 53005

A C C U S A T I O N

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about September 21, 2001, the Board of Pharmacy issued
21 Pharmacist License Number RPH 53005 to Noelle Doan Bui (Respondent). The Pharmacist
22 License was in full force and effect at all times relevant to the charges brought herein and will
23 expire on January 31, 2009, unless renewed.

24 **JURISDICTION**

25 3. This Accusation 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 unless otherwise indicated.

28 4. Section 4301 of the Code states:

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

5
6 "(f) The commission of any act involving moral turpitude, dishonesty, fraud,
7 deceit, or corruption, whether the act is committed in the course of relations as a licensee or
8 otherwise, and whether the act is a felony or misdemeanor or not.

9
10 "(j) The violation of any of the statutes of this state, or any other state, or of the
11 United States regulating controlled substances and dangerous drugs.

12
13 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or
14 abetting the violation of or conspiring to violate any provision or term of this chapter or of the
15 applicable federal and state laws and regulations governing pharmacy, including regulations
16 established by the board or by any other state or federal regulatory agency.

17 5. Section 4059 of the Code states:

18 "(a) A person may not furnish any dangerous drug, except upon the prescription of
19 a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to
20 Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of
21 a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to
22 Section 3640.7.

23 6. Section 4022 of the Code states:

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

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

28 "(b) Any device that bears the statement: "Caution: federal law restricts this

1 device to sale by or on the order of a _____, "Rx only," or words of similar import, the
2 blank to be filled in with the designation of the practitioner licensed to use or order use of the
3 device.

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

6 7. Section 4306.5 of the Code states:

7 Unprofessional conduct for a pharmacist may include any of the following:

8

9 (b) Acts or omissions that involve, in whole or in part, the failure to exercise or
10 implement his or her best professional judgment or corresponding responsibility with regard to
11 the dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or
12 with regard to the provision of services.

13 8. Section 4104 of the Code states:

14

15 (c) Every pharmacy shall report to the board, within 30 days of the receipt or
16 development of the following information with regard to any licensed individual employed by or
17 with the pharmacy: (6) Any termination of a licensed individual based on theft, diversion, or
18 self-use of dangerous drugs.

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

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

26 10. Section 125.3 states, in pertinent part, that the Board may request the
27 administrative law judge to direct a licentiate found to have committed a violation or violations
28 of the licensing to pay a sum not to exceed the reasonable costs of the investigation and

1 enforcement of the case.

2 **DANGEROUS DRUGS**

3 11. The dangerous drugs stolen by Respondent are listed below:

4 12. Evista, brand name for the generic drug Raloxifene, is categorized as a
5 dangerous drug pursuant to Business and Professions Code section 4022.

6 13. Flonase, brand name for the generic drug Fluticasone Propionate, is
7 categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

8 14. Lo Ovral, brand name for the generic drug Norgestrel & Ethinyl Estradiol, is
9 categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

10 15. Zyrtec, brand name for the generic drug Cetirizine, is categorized as a
11 dangerous drug pursuant to Business and Professions Code section 4022.

12 **FIRST CAUSE FOR DISCIPLINE**

13 (Commission of Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit)

14 16. Respondent was employed as a pharmacist for Ralphs Pharmacy #99, in
15 Foothill Ranch, California on or around October 2005 and was terminated on September 22,
16 2006 for admitting to diversion and furnishing others with dangerous drugs without a
17 prescription or authorization. Respondent is subject to disciplinary action under Code section
18 4301, subdivision (f), in that Respondent committed acts involving moral turpitude, dishonesty,
19 fraud, deceit, or corruption as follows:

20 a. On September 22, 2006, Respondent was terminated while working as a
21 pharmacist at Ralphs Pharmacy #99 located at Foothill Ranch, California. On January 15, 2007,
22 Respondent admitted to diverting dangerous drugs from the pharmacy without authorization in a
23 statement to Inspector Valerie Knight. These drugs include Flonase, Zyrtec, and Lo Ovral.

24 b. On or about August 24, 2006, Respondent was observed on video
25 surveillance removing Flonase from the pharmacy shelf, placing it in her personal belongings,
26 and walking out of the pharmacy with her personal belongings.

27 c. On or about January 15, 2007, Respondent submitted a written statement
28 to the Board of Pharmacy admitting that she had, indeed, stolen prescription drugs including

1 Flonase, Zyrtec, and Lo Ovril from the Ralphs #99 Pharmacy and furnishing it to others without
2 prescription or authorization.

3 d. Respondent stole prescription drugs worth a value of approximately
4 \$300.00 from Ralphs #99 Pharmacy.

5 **SECOND CAUSE FOR DISCIPLINE**

6 (Violation of Statutes Governing Dangerous Drugs)

7 17. Respondent is subject to disciplinary action under Code section 4301,
8 subdivisions (j) and (o) for violating Code sections 4059, subdivision (a), in that Respondent
9 possessed and furnished to others dangerous drugs without a valid prescription. The
10 circumstances are as follows:

11 a. On September 22, 2006, Respondent admitted she furnished Flonase,
12 Evista and birth control pills, all dangerous drugs as defined under Business and Professions
13 Code section 4022, to others without a valid prescription or authorization.

14 b. On January 15, 2007, Respondent admitted she furnished Zyrtec, a
15 dangerous drug as defined in Business and Professions Code section 4022, to others without a
16 valid prescription or authorization.

17 **PRAYER**

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

20 1. Revoking or suspending Pharmacist License Number RPH 53005, issued
21 to Noelle Doan Bui.

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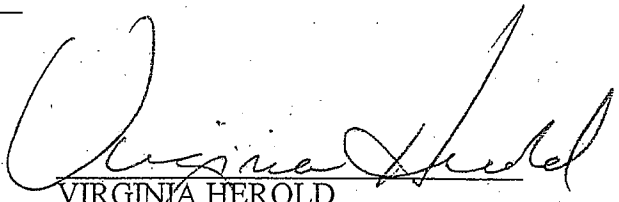
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2. Ordering Noelle Doan Bui to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 3/14/08



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

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