

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

In the Matter of the Accusation Against:

**WALGREENS NO. 06683**  
5328 Cypress Avenue  
Visalia, CA 93277

Pharmacy Permit No. PHY 46263

Respondent.

Case No. 3695

OAH No. 2012110402

**DECISION AND ORDER**

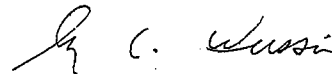
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on November 12, 2013.

It is so ORDERED on November 6, 2013.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



\_\_\_\_\_  
STAN C. WEISSER  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
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Supervising Deputy Attorney General  
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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:

12 **WALGREENS NO. 06683**  
13 **5328 Cypress Avenue**  
14 **Visalia, CA 93277**

15 **Pharmacy Permit No. PHY 46263**

16 Respondents.

Case No. 3695

OAH No. 2012110402

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

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

19 PARTIES

20 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.  
21 She brought this action solely in her official capacity and is represented in this matter by Kamala  
22 D. Harris, Attorney General of the State of California, by Jeffrey M. Phillips, Deputy Attorney  
23 General.

24 2. Respondent Walgreens No. 06683 (Respondent) is represented in this proceeding by  
25 attorney Jonathan Klein of Kelly, Hockel & Klein, P.C., whose address is: One Sansome Street,  
26 Suite 1800, San Francisco, CA 94104.

27 3. On or about December 24, 2002, the Board of Pharmacy issued Pharmacy Permit No.  
28 PHY 46263 to Walgreens No. 06683 (Respondent). The Pharmacy Permit was in full force and

1 effect at all times relevant to the charges brought in Accusation No. 3695 and will expire on May  
2 1, 2014, unless renewed.

3 JURISDICTION

4 4. Accusation No. 3695 was filed before the Board of Pharmacy (Board), Department of  
5 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other  
6 statutorily required documents were properly served on Respondent on September 25, 2012.  
7 Respondent timely filed its Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 3695 is attached as exhibit A and incorporated herein by  
9 reference.

10 ADVISEMENT AND WAIVERS

11 6. Respondent has carefully read, fully discussed with counsel, and understands the  
12 charges and allegations in Accusation No. 3695. Respondent has also carefully read, fully  
13 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary  
14 Order.

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

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

24 CULPABILITY

25 9. Respondent understands and agrees that the charges and allegations in  
26 Accusation No. 3695, if proven at a hearing, constitute cause for imposing discipline upon its  
27 Pharmacy Permit.

28 //

1 8. For the purpose of resolving the Accusation without the expense and uncertainty of  
2 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual  
3 basis for the charges in the Accusation, and that Respondent hereby gives up its right to contest  
4 those charges.

5 RESERVATION

6 10. The admissions made by Respondent herein are only for the purposes of this  
7 proceeding, or any other proceedings in which the Board of Pharmacy or other professional  
8 licensing agency is involved, and shall not be admissible in any other criminal or civil  
9 proceeding.

10 CONTINGENCY

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

20 12. The parties understand and agree that Portable Document Format (PDF) and facsimile  
21 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format  
22 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

23 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
24 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
25 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
26 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
27 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
28 writing executed by an authorized representative of each of the parties.

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

4 **DISCIPLINARY ORDER**

5 IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 46263 issued to Respondent  
6 Walgreens No. 06683 (Respondent) is revoked. However, the revocation is stayed and  
7 Respondent is placed on probation for three (3) years on the following terms and conditions.

8 **1. Obey All Laws**

9 Respondent owner shall obey all state and federal laws and regulations.

10 Respondent owner shall report any of the following occurrences to the board, in writing,  
11 within seventy-two (72) hours of such occurrence, on its premises:

- 12  an arrest or issuance of a criminal complaint for violation of any provision of the  
13 Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
14 substances laws
- 15  a plea of guilty or nolo contendere in any state or federal criminal proceeding to any  
16 criminal complaint, information or indictment
- 17  a conviction of any crime
- 18  discipline, citation, or other administrative action filed by any state or federal agency  
19 which involves respondent's permit or which is related to the practice of pharmacy or  
20 the manufacturing, obtaining, handling or distributing, billing, or charging for any  
21 drug, device or controlled substance.

22 Failure to timely report any such occurrence shall be considered a violation of probation.

23 **2. Report to the Board**

24 Respondent owner shall report to the board quarterly, on a schedule as directed by the board  
25 or its designee. The report shall be made either in person or in writing, as directed. Among other  
26 requirements, respondent owner shall state in each report under penalty of perjury whether there  
27 has been compliance with all the terms and conditions of probation. Failure to submit timely  
28 reports in a form as directed shall be considered a violation of probation. Any period(s) of

1 delinquency in submission of reports as directed may be added to the total period of probation.  
2 Moreover, if the final probation report is not made as directed, probation shall be automatically  
3 extended until such time as the final report is made and accepted by the board.

4 **3. Interview with the Board**

5 Upon receipt of reasonable prior notice, respondent owner shall appear in person for  
6 interviews with the board or its designee, at such intervals and locations as are determined by the  
7 board or its designee. Failure to appear for any scheduled interview without prior notification to  
8 board staff, or failure to appear for two (2) or more scheduled interviews with the board or its  
9 designee during the period of probation, shall be considered a violation of probation.

10 **4. Cooperate with Board Staff**

11 Respondent owner shall cooperate with the board's inspection program and with the board's  
12 monitoring and investigation of respondent's compliance with the terms and conditions of their  
13 probation. Failure to cooperate shall be considered a violation of probation.

14 **5. Reimbursement of Board Costs**

15 As a condition precedent to successful completion of probation, respondent owner shall pay  
16 to the board its costs of investigation and prosecution in the amount of \$ 14,914 within 60 days of  
17 the effective date of probation. Failure to pay costs by the deadline(s) as directed shall be  
18 considered a violation of probation.

19 The filing of bankruptcy by respondent owner shall not relieve respondent of their  
20 responsibility to reimburse the board its costs of investigation and prosecution.

21 **6. Probation Monitoring Costs**

22 Respondent owner shall pay any costs associated with probation monitoring as determined  
23 by the board each and every year of probation. Such costs shall be payable to the board on a  
24 schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as  
25 directed shall be considered a violation of probation.

26 //

27 //

28 //

1           **7. Status of License**

2           Respondent owner shall, at all times while on probation, maintain current licensure with the  
3 board. If respondent owner submits an application to the board, and the application is approved,  
4 for a change of location, change of permit or change of ownership, the board shall retain  
5 continuing jurisdiction over the license, and the respondent shall remain on probation as  
6 determined by the board. Failure to maintain current licensure shall be considered a violation of  
7 probation.

8           If respondent owner's license expires or is cancelled by operation of law or otherwise at any  
9 time during the period of probation, including any extensions thereof or otherwise, upon renewal  
10 or reapplication respondent owner's license shall be subject to all terms and conditions of this  
11 probation not previously satisfied.

12           **8. License Surrender While on Probation/Suspension**

13           Following the effective date of this decision, should respondent owner discontinue  
14 business, respondent owner may tender the premises license to the board for surrender. The  
15 board or its designee shall have the discretion whether to grant the request for surrender or take  
16 any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of  
17 the license, respondent will no longer be subject to the terms and conditions of probation.

18           Upon acceptance of the surrender, respondent owner shall relinquish the premises wall and  
19 renewal license to the board within ten (10) days of notification by the board that the surrender is  
20 accepted. Respondent owner shall further submit a completed Discontinuance of Business form  
21 according to board guidelines and shall notify the board of the records inventory transfer.

22           Respondent owner shall also, by the effective date of this decision, arrange for the  
23 continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written  
24 notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that  
25 identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating  
26 as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five  
27 days of its provision to the pharmacy's ongoing patients, Respondent owner shall provide a copy  
28 of the written notice to the board. For the purposes of this provision, "ongoing patients" means

1 those patients for whom the pharmacy has on file a prescription with one or more refills  
2 outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60)  
3 days.

4 Respondent owner may not apply for any new licensure from the board for three (3) years  
5 from the effective date of the surrender. Respondent owner shall meet all requirements applicable  
6 to the license sought as of the date the application for that license is submitted to the board.

7 Respondent owner further stipulates that he or she shall reimburse the board for its costs of  
8 investigation and prosecution prior to the acceptance of the surrender.

9 **9. Notice to Employees**

10 Respondent owner shall, upon or before the effective date of this decision, ensure that all  
11 employees involved in permit operations are made aware of all the terms and conditions of  
12 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.  
13 If the notice required by this provision is posted, it shall be posted in a prominent place and shall  
14 remain posted throughout the probation period. Respondent owner shall ensure that any  
15 employees hired or used after the effective date of this decision are made aware of the terms and  
16 conditions of probation by posting a notice, circulating a notice, or both. Additionally,  
17 respondent owner shall submit written notification to the board, within fifteen (15) days of the  
18 effective date of this decision, that this term has been satisfied. Failure to submit such  
19 notification to the board shall be considered a violation of probation.

20 "Employees" as used in this provision includes all full-time, part-time,  
21 volunteer, temporary and relief employees and independent contractors employed or  
22 hired at any time during probation.

23 **10. Owners and Officers: Knowledge of the Law**

24 Respondent shall provide, within thirty (30) days after the effective date of this decision,  
25 signed and dated statements from its owners, including any owner or holder of ten percent (10%)  
26 or more of the interest in respondent or respondent's stock, or any officer, or any district manager  
27 authorized by Respondent, stating under penalty of perjury that said individuals have read and are  
28 familiar with state and federal laws and regulations governing the practice of pharmacy. The



1 failure to timely provide said statements under penalty of perjury shall be considered a violation  
2 of probation.

3 **11. Posted Notice of Probation**

4 Respondent owner shall prominently post a probation notice provided by the board in a  
5 place conspicuous and readable to the public. The probation notice shall remain posted during  
6 the entire period of probation.

7 Respondent owner shall not, directly or indirectly, engage in any conduct or make any  
8 statement which is intended to mislead or is likely to have the effect of misleading any patient,  
9 customer, member of the public, or other person(s) as to the nature of and reason for the probation  
10 of the licensed entity.

11 Failure to post such notice shall be considered a violation of probation.

12 **12. Violation of Probation**

13 If a respondent owner has not complied with any term or condition of probation, the board  
14 shall have continuing jurisdiction over respondent license, and probation shall be automatically  
15 extended until all terms and conditions have been satisfied or the board has taken other action as  
16 deemed appropriate to treat the failure to comply as a violation of probation, to terminate  
17 probation, and to impose the penalty that was stayed.

18 If respondent owner violates probation in any respect, the board, after giving respondent  
19 owner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary  
20 order that was stayed. Notice and opportunity to be heard are not required for those provisions  
21 stating that a violation thereof may lead to automatic termination of the stay and/or revocation of  
22 the license. If a petition to revoke probation or an accusation is filed against respondent during  
23 probation, the board shall have continuing jurisdiction and the period of probation shall be  
24 automatically extended until the petition to revoke probation or accusation is heard and decided.

25 **13. Completion of Probation**

26 Upon written notice by the board or its designee indicating successful completion of  
27 probation, respondent license will be fully restored.

28 //

1 Within sixty (60) days of the effective date of this decision, respondent owner shall submit  
 2 to the board or its designee, for prior approval, a community service program in which respondent  
 3 shall provide free health-care related services to a community or charitable facility or agency for  
 4 at least ten (10) hours per year for the first two(2) years of probation.

5 Within thirty (30) days of board approval thereof, respondent owner shall submit  
 6 documentation to the board demonstrating commencement of the community service program.  
 7 Respondent owner shall report on progress with the community service program in the quarterly  
 8 reports.

9 Failure to timely submit, commence, or comply with the program shall be considered a  
 10 violation of probation.

11 **15. Separate File of Records**

12 Respondent owner shall maintain and make available for inspection a separate file of all  
 13 records pertaining to the acquisition or disposition of all controlled substances. Failure to  
 14 maintain such file or make it available for inspection shall be considered a violation of probation.

15  
 16  
 17 ACCEPTANCE

18 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
 19 discussed it with my attorney, Jonathan Klein. I understand the stipulation and the effect it will  
 20 have on my Pharmacy Permit. I enter into this Stipulated Settlement and Disciplinary Order  
 21 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the  
 22 Board of Pharmacy.

23  
 24 DATED: 8/23/13  EXECUTIVE PHARMACY DIRECTOR  
 25 WALGREENS NO. 06683  
 Respondent

26 I have read and fully discussed with Respondent Walgreens No. 06683 the terms and  
 27 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.  
 28 I approve its form and content.

1 I have read and fully discussed with Respondent Walgreens No. 06683 the terms and  
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.  
3 I approve its form and content.

4 DATED:

8/23/13

/s/

Jonathan Klein  
Attorney for Respondent

8 ENDORSEMENT

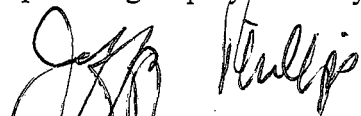
9 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
10 submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

11 Dated:

8/23/13

Respectfully submitted,

13 KAMALA D. HARRIS  
Attorney General of California  
14 JANICE K. LACHMAN  
Supervising Deputy Attorney General

15   
16 JEFFREY M. PHILLIPS  
17 Deputy Attorney General  
Attorneys for Complainant

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**Exhibit A**

**Accusation No. 3695**

1 KAMALA D. HARRIS  
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2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
3 JEFFREY M. PHILLIPS  
Deputy Attorney General  
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3695

12 **WALGREENS NO. 06683**  
13 **5328 CYPRESS AVENUE,**  
**VISALIA, CA 93277**  
14 **PERMIT NO. PHY 46263**

**ACCUSATION**

15 **HANH LE PHAM**  
16 **13231 CHESTNUT ST.**  
**WESTMINSTER, CA 92683**  
17 **PHARMACIST LICENSE NO. RPH 55049**

18 Respondents.

19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
22 as the Executive Officer of the Board of Pharmacy, 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 relevant to the charges brought herein and will expire on  
26 May 1, 2012, unless renewed.



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

3           ....

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

9           7. Section 4301 of the Code states:

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

13           ....

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

17           ....

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

20           ....

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

25           //

26           //

27           //

28

1 8. Section 4022 of the Code states

2 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in  
3 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."

11 9. Section 4060 of the Code states:

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

23 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a  
24 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and  
25 devices."

26 ///

27 ///

28 ///



1           10. Section 4104 of the Code provides as follows:

2           (a) Every pharmacy shall have in place procedures for taking action to protect the public  
3 when a licensed individual employed by or with the pharmacy is discovered or known to be  
4 chemically, mentally, or physically impaired to the extent it affects his or her ability to practice  
5 the profession or occupation authorized by his or her license, or is discovered or known to have  
6 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.

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

13           (1) Any admission by a licensed individual of chemical, mental, or physical impairment  
14 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.

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

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

21           (5) Any termination based on chemical, mental, or physical impairment of a licensed  
22 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.

25           11. California Code of Regulations, title 16, section 1714, subdivision (b) provides:

26           “(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and  
27 equipment so that drugs are safely and properly prepared, maintained, secured and distributed.”

28           ///

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 COST RECOVERY

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 Drugs

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

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

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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1 FIFTH CAUSE FOR DISCIPLINE

2 (Failure to Report)

3 22. Respondent Pham is subject to discipline for unprofessional conduct under  
4 section 4301, subdivision (o), 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

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. 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 Virginia Herold

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

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