

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

In the Matter of the Accusation Against:

Case No. 3714

CVS PHARMACY #9849
8280 Magnolia Avenue
Riverside, CA 92504
Pharmacy Permit No. PHY 49723

and

NGUYEN NGUYEN
808 Carew Dr.
Placentia, CA 92870
Pharmacist License No. RPH 57940

Respondent.

DECISION AND ORDER

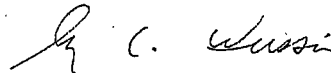
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on November 17, 2011.

It is so ORDERED on October 18, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

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Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 3714

12 **CVS PHARMACY #9849**
13 **8280 Magnolia Avenue**
14 **Riverside, CA 92504**

OAH No. 2010120735

15 **Original Permit No. PHY 47923**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
RESPONDENT NGUYEN**

16 **and**

17 **NGUYEN NGUYEN, RPH**
18 **808 Carew Dr.**
Placentia, CA 92870

19 **Original Pharmacist License No. RPH 57940**

20 Respondents.

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

23 PARTIES

24 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
25 She brought this action solely in her official capacity and is represented in this matter by Kamala
26 D. Harris, Attorney General of the State of California, by Diane de Kervor, Deputy Attorney
27 General.
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1 2. On or about December 14, 2005, the Board of Pharmacy issued Pharmacist License
2 Number RPH 57940 to Nguyen Nguyen (Respondent Nguyen). The Pharmacist License will
3 expire on October 31, 2011, unless renewed. Respondent Nguyen was the Pharmacist in Charge
4 at CVS from November 22, 2006, to April 18, 2007.

5 3. Respondent Nguyen is represented in this proceeding by attorney Roger Morris,
6 whose address is: Quarles & Brady, Two N. Central Ave., Pheonix, AZ 85004.

7 JURISDICTION

8 4. Accusation No. 3714 was filed before the Board of Pharmacy (Board), Department of
9 Consumer Affairs, and is currently pending against Respondent Nguyen. The Accusation and all
10 other statutorily required documents were properly served on Respondent Nguyen on November
11 19, 2010. Respondent Nguyen timely filed his Notice of Defense contesting the Accusation. A
12 copy of Accusation No. 3714 is attached as exhibit A and incorporated herein by reference.

13 ADVISEMENT AND WAIVERS

14 5. Respondent Nguyen has carefully read, fully discussed with counsel, and understand
15 the charges and allegations in Accusation No. 3714. Respondent has also carefully read, fully
16 discussed with counsel, and understand the effects of this Stipulated Settlement and Disciplinary
17 Order.

18 6. Respondent Nguyen is fully aware of his legal rights in this matter, including the right
19 to a hearing on the charges and allegations in the Accusation; the right to confront and cross-
20 examine the witnesses against him; the right to present evidence and to testify on his own behalf;
21 the right to the issuance of subpoenas to compel the attendance of witnesses and the production of
22 documents; the right to reconsideration and court review of an adverse decision; and all other
23 rights accorded by the California Administrative Procedure Act and other applicable laws.

24 7. Respondent Nguyen voluntarily, knowingly, and intelligently waive and give up each
25 and every right set forth above.

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CULPABILITY

8. Respondent Nguyen admits the truth of each and every charge and allegation in Accusation No. 3714.

9. Respondent Nguyen agrees that his Pharmacist License is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

RESERVATION

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

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent Nguyen 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 his counsel. By signing the stipulation, Respondent understands and agree that he may not withdraw their 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.

12. 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.

13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement.

1 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
2 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
3 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
4 writing executed by an authorized representative of each of the parties.

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

8 **DISCIPLINARY ORDER AS TO RESPONDENT NGUYEN**

9 IT IS HEREBY ORDERED that Original Pharmacist License No. RPH 57040 issued to
10 Respondent Nguyen is revoked. However, the revocation is stayed and Respondent is placed on
11 probation for two (2) years on the following terms and conditions.

12 **1. Obey All Laws**

13 Respondent shall obey all state and federal laws and regulations.

14 Respondent shall report any of the following occurrences to the board, in writing, within
15 seventy-two (72) hours of such occurrence:

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

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

27 **2. Report to the Board**

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1 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
2 designee. The report shall be made either in person or in writing, as directed. Among other
3 requirements, respondent shall state in each report under penalty of perjury whether there has
4 been compliance with all the terms and conditions of probation. Failure to submit timely reports
5 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
6 in submission of reports as directed may be added to the total period of probation. Moreover, if
7 the final probation report is not made as directed, probation shall be automatically extended until
8 such time as the final report is made and accepted by the board.

9 **3. Interview with the Board**

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

15 **4. Cooperate with Board Staff**

16 Respondent shall cooperate with the board's inspection program and with the board's
17 monitoring and investigation of respondent's compliance with the terms and conditions of their
18 probation. Failure to cooperate shall be considered a violation of probation.

19 **5. Continuing Education**

20 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
21 pharmacist as directed by the board or its designee.

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25 **6. Notice to Employers**

26 During the period of probation, respondent shall notify all present and prospective
27 employers of the decision in case number 3714 and the terms, conditions and restrictions imposed
28 on respondent by the decision, as follows:

1 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
2 respondent undertaking any new employment, respondent shall cause his direct supervisor,
3 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
4 tenure of employment) and owner to report to the board in writing acknowledging that the listed
5 individual(s) has/have read the decision in case number 3714, and terms and conditions imposed
6 thereby. It shall be respondent's responsibility to ensure that their employer(s) and/or
7 supervisor(s) submit timely acknowledgment(s) to the board.

8 If respondent works for or is employed by or through a pharmacy employment service,
9 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
10 licensed by the board of the terms and conditions of the decision in case number 3714 in advance
11 of the respondent commencing work at each licensed entity. A record of this notification must be
12 provided to the board upon request.

13 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
14 (15) days of respondent undertaking any new employment by or through a pharmacy employment
15 service, respondent shall cause his direct supervisor with the pharmacy employment service to
16 report to the board in writing acknowledging that he has read the decision in case number 3714
17 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
18 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

19 Failure to timely notify present or prospective employer(s) or to cause that/those
20 employer(s) to submit timely acknowledgments to the board shall be considered a violation of
21 probation.

22 "Employment" within the meaning of this provision shall include any full-time,
23 part-time, temporary, relief or pharmacy management service as a pharmacist or any
24 position for which a pharmacist license is a requirement or criterion for employment,
25 whether the respondent is an employee, independent contractor or volunteer.

26 **7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
27 **Designated Representative-in-Charge, or Serving as a Consultant**

1 During the period of probation, respondent shall not supervise any intern pharmacist, be the
2 pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board
3 nor serve as a consultant unless otherwise specified in this order. Assumption of any such
4 unauthorized supervision responsibilities shall be considered a violation of probation.

5 **8. Reimbursement of Board Costs**

6 As a condition precedent to successful completion of probation, respondent shall pay to the
7 board its costs of investigation and prosecution in the amount of \$1,372.00. Respondent shall
8 make said payments as approved by the Board.

9 There shall be no deviation from this schedule absent prior written approval by the board or
10 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of
11 probation.

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

14 **9. Probation Monitoring Costs**

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

19 **10. Status of License**

20 Respondent shall, at all times while on probation, maintain an active, current license with
21 the board, including any period during which suspension or probation is tolled. Failure to
22 maintain an active, current license shall be considered a violation of probation.

23 If respondent's license expires or is cancelled by operation of law or otherwise at any time
24 during the period of probation, including any extensions thereof due to tolling or otherwise, upon
25 renewal or reapplication respondent's license shall be subject to all terms and conditions of this
26 probation not previously satisfied.

27 **11. License Surrender While on Probation/Suspension**

1 Following the effective date of this decision, should respondent cease practice due to
2 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
3 respondent may tender their license to the board for surrender. The board or its designee shall
4 have the discretion whether to grant the request for surrender or take any other action it deems
5 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent
6 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
7 record of discipline and shall become a part of the respondent's license history with the board.

8 Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to
9 the board within ten (10) days of notification by the board that the surrender is accepted.
10 Respondent may not reapply for any license from the board for three (3) years from the effective
11 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
12 of the date the application for that license is submitted to the board, including any outstanding
13 costs.

14 **12. Notification of a Change in Name, Residence Address, Mailing Address or**
15 **Employment**

16 Respondent shall notify the board in writing within ten (10) days of any change of
17 employment. Said notification shall include the reasons for leaving, the address of the new
18 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
19 shall further notify the board in writing within ten (10) days of a change in name, residence
20 address, mailing address, or phone number.

21 Failure to timely notify the board of any change in employer(s), name(s), address(es), or
22 phone number(s) shall be considered a violation of probation.

23 **13. Tolling of Probation**

24 Except during periods of suspension, respondent shall, at all times while on probation, be
25 employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any
26 month during which this minimum is not met shall toll the period of probation, i.e., the period of
27 probation shall be extended by one month for each month during which this minimum is not met.

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1 During any such period of tolling of probation, respondent must nonetheless comply with all
2 terms and conditions of probation.

3 Should respondent, regardless of residency, for any reason (including vacation) cease
4 practicing as a pharmacist for a minimum of 40 hours per calendar month in California,
5 respondent must notify the board in writing within ten (10) days of the cessation of practice, and
6 must further notify the board in writing within ten (10) days of the resumption of practice. Any
7 failure to provide such notification(s) shall be considered a violation of probation.

8 It is a violation of probation for respondent's probation to remain tolled pursuant to the
9 provisions of this condition for a total period, counting consecutive and non-consecutive months,
10 exceeding thirty-six (36) months.

11 "Cessation of practice" means any calendar month during which respondent is
12 not practicing as a pharmacist for at least 40 hours, as defined by Business and
13 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
14 month during which respondent is practicing as a pharmacist for at least 40 as a
15 pharmacist as defined by Business and Professions Code section 4000 et seq.

16 **14. Violation of Probation**

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

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

1 **15. Completion of Probation**

2 Upon written notice by the board or its designee indicating successful completion of
3 probation, respondent's license will be fully restored.

4 **16. Community Services Program**

5 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
6 board or its designee, for prior approval, a community service program in which respondent shall
7 provide free health-care related services on a regular basis to a community or charitable facility or
8 agency for at least 50 hours for the first year of probation. Within thirty (30) days of board
9 approval thereof, respondent shall submit documentation to the board demonstrating
10 commencement of the community service program. A record of this notification must be
11 provided to the board upon request. Respondent shall report on progress with the community
12 service program in the quarterly reports. Failure to timely submit, commence, or comply with the
13 program shall be considered a violation of probation.

14 **17. Remedial Education**

15 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
16 board or its designee, for prior approval, an appropriate program of remedial education related to
17 security of a pharmacy. The program of remedial education shall consist of at least 20 hours,
18 which shall be completed within the period of probation at respondent's own expense. All
19 remedial education shall be in addition to, and shall not be credited toward, continuing education
20 (CE) courses used for license renewal purposes.

21 Failure to timely submit or complete the approved remedial education shall be considered a
22 violation of probation. The period of probation will be automatically extended until such
23 remedial education is successfully completed and written proof, in a form acceptable to the board,
24 is provided to the board or its designee.

25 Following the completion of each course, the board or its designee may require the
26 respondent, at their own expense, to take an approved examination to test the respondent's
27 knowledge of the course. If the respondent does not achieve a passing score on the examination,
28 this failure shall be considered a violation of probation. Any such examination failure shall

1 require respondent to take another course approved by the board in the same subject area.

2 **18. No Ownership of Licensed Premises**

3 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
4 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
5 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
6 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
7 days following the effective date of this decision and shall immediately thereafter provide written
8 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
9 documentation thereof shall be considered a violation of probation.

10 ACCEPTANCE

11 We have carefully read the above Stipulated Settlement and Disciplinary Order and have
12 fully discussed it with our attorney, Roger Morris. We understand the stipulation and the effect it
13 will have on our Original Permit and Original Pharmacist License. We enter into this Stipulated
14 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
15 bound by the Decision and Order of the Board of Pharmacy.

16 DATED: 6/21/2011 *Nguyen Nguyen*
17 NGUYEN NGUYEN, RDH
Respondent Nguyen

18 I have read and fully discussed with Respondent CVS Pharmacy and Respondent Nguyen
19 the terms and conditions and other matters contained in the above Stipulated Settlement and
20 Disciplinary Order. I approve its form and content.

21 DATED: 6/22/2011 *Amey R. Patton for Roger Morris*
22 ROGER MORRIS
Attorney for Respondent

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27 ENDORSEMENT

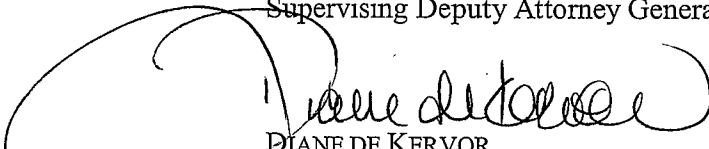
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The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: July 24, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General


DIANE DE KERVOR
Deputy Attorney General
Attorneys for Complainant

SD2010800675
80492103.docx

Exhibit A

Accusation No. 3714

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Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 DIANE DE KERVOR
Deputy Attorney General
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Attorneys for Complainant

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Original Permit No. PHY 47923,

A C C U S A T I O N

15 **And**

16 **NGUYEN NGUYEN, RPH**
17 **808 Carew Dr.**
18 **Placentia, CA 92870**
Pharmacist License No. 57940

19 Respondents.

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 September 18, 2006, the Board of Pharmacy issued Pharmacy Permit
26 Number PHY 47923 to CVS Pharmacy #9849 (Respondent CVS). The Pharmacy Permit was in
27
28

1 full force and effect at all times relevant to the charges brought herein and will expire on June 1,
2 2011, unless renewed.

3 3. On or about December 14, 2005, the Board of Pharmacy issued Pharmacist License
4 Number RPH 57940 to Nguyen Nguyen (Respondent Nguyen). The Pharmacist License was in
5 full force and effect at all times relevant to the charges brought herein and will expire on October
6 31, 2011, unless renewed. Respondent Nguyen was the Pharmacist in Charge at CVS from
7 November 22, 2006, to April 18, 2007.

8 JURISDICTION

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

12 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
13 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
14 disciplinary action during the period within which the license may be renewed, restored, reissued
15 or reinstated.

16 6. Section 4300, subdivision (a) of the Code states that "Every license issued may be
17 suspended or revoked."

18 7. Section 4032 defines "license" to include any license, permit, registration, certificate,
19 or exemption issued by the board.

20 STATUTORY AUTHORITY

21 8. Section 4022 of the Code states

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

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

26 "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale
27 by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled
28 in with the designation of the practitioner licensed to use or order use of the device.

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

3 9. Section 4081 of the Code states:

4 "(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs
5 or dangerous devices shall be at all times during business hours open to inspection by authorized
6 officers of the law, and shall be preserved for at least three years from the date of making. A
7 current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary
8 food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital,
9 institution, or establishment holding a currently valid and unrevoked certificate, license, permit,
10 registration, or exemption under Division 2 (commencing with Section 1200) of the Health and
11 Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and
12 Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

13 "(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal
14 drug retailer shall be jointly responsible, with the pharmacist-in-charge or representative-in-
15 charge, for maintaining the records and inventory described in this section."

16 10. Section 4113 of the Code states:

17 ". . . .

18 "(c) The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all
19 state and federal laws and regulations pertaining to the practice of pharmacy."

20 11. Section 4156 of the Code states:

21 A pharmacy corporation shall not do, or fail to do, any act where doing or failing to do the
22 act would constitute unprofessional conduct under any statute or regulation. In the conduct of its
23 practice, a pharmacy corporation shall observe and be bound by the laws and regulations that
24 apply to a person licensed under this chapter.

25 12. Section 4301 of the Code states:

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

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“ . . .

“(j) The violation of any of the statutes of this state, or 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 in 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.”

13. Section 4306.5 of the Code states:

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

“(a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or her education, training, or experience as a pharmacist, whether or not the act or omission arises in the course of the practice of pharmacy or the ownership, management, administration, or operation of a pharmacy or other entity licensed by the board.”

14. Health and Safety Code section 11171 states:

“No person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division.”

REGULATIONS

15. Title 16, California Code of Regulations, Section 1707.2 provides:

“(a) A pharmacist shall provide oral consultation to his or her patient or the patient's agent in all care settings:

(1) upon request; or

(2) whenever the pharmacist deems it warranted in the exercise of his or her professional judgment.

(b)(1) In addition to the obligation to consult set forth in subsection (a), a pharmacist shall provide oral consultation to his or her patient or the patient's agent in any care setting in which the patient or agent is present:

(A) whenever the prescription drug has not previously been dispensed to a patient; or

1 (B) whenever a prescription drug not previously dispensed to a patient in the same dosage
2 form, strength or with the same written directions, is dispensed by the pharmacy.

3 (2) When the patient or agent is not present (including but not limited to a prescription drug
4 that was shipped by mail) a pharmacy shall ensure that the patient receives written notice: of his
5 or her right to request consultation; and a telephone number from which the patient may obtain
6 oral consultation from a pharmacist who has ready access to the patient's record.”

7 16. Title 16, California Code of Regulations, Section 1714 provides:

8 “... ”

9 “(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and
10 equipment so that drugs are safely and properly prepared, maintained, secured and distributed.
11 The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice
12 of pharmacy.”

13 17. Title 16, California Code of Regulations, Section 1715.6 provides:

14 “The owner shall report to the Board within thirty (30) days of discovery of any loss of the
15 controlled substances, including their amounts and strengths.”

16 18. Title 16, California Code of Regulations, section 1718 provides:

17 “‘Current Inventory’ as used in Sections 4081 and 4332 of the Business and Professions
18 Code shall be considered to include complete accountability for all dangerous drugs handled by
19 every licensee enumerated in Sections 4081 and 4332.”

20 **COST RECOVERY**

21 19. Section 125.3 of the Code states, in pertinent part, that the Board may request the
22 administrative law judge to direct a licentiate found to have committed a violation or violations of
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
24 enforcement of the case.

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FACTS SUPPORTING CAUSES FOR DISCIPLINE

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2 20. On February 23, 2009, the Board received an anonymous complaint that a Pharmacy
3 Technician had been convicted in July of 2008 for stealing hundreds of bottles of narcotics from
4 CVS Pharmacy in Riverside with the intent to sell them.

5 21. The Pharmacy Technician was employed by CVS Pharmacy from June 18, 2006 to
6 February 1, 2007. When the Pharmacist in Charge of the Pharmacy at the time, Respondent N.
7 Nguyen, suspected the theft, he reported it to the store's Loss Prevention Staff who installed
8 video cameras and monitored the Pharmacy Technician while she was on duty, catching her in the
9 act of taking the drugs off the shelves. The Pharmacy Technician was arrested and subsequently
10 convicted of embezzlement and possession of controlled substances with the intent to sell.

11 22. The Board's investigation substantiated the allegation against the Technician, who
12 surrendered her license in another action, and found further violations of pharmacy law by CVS
13 Pharmacy and the pharmacists who worked there. Those violations are at issue here.

14 23. CVS could not locate its May 2006 DEA inventory. The results of a Board audit of
15 the CVS DEA narcotics inventory from November 21, 2006 to May 1, 2007 found losses of
16 52,927 hydrocodone 10/325 pills.

17 24. The results of a CVS audit from November 21, 2006 to January 30, 2007, corrected
18 for warehouse purchases that were outside of that range, reflect a loss of 46,323 hydrocodone
19 10/325 pills, likely due to the theft. Given that the Pharmacy Technician subsequently admitted
20 to stealing drugs for nearly the entire time she worked at the pharmacy, it is quite likely that the
21 actual losses were far greater than this amount.

22 25. Although CVS Pharmacy initially reported the theft to the Bureau of Narcotic
23 Enforcement, it does not appear that the Pharmacy inventoried the actual losses from the theft and
24 the losses that were discovered were never reported to the Board.

1 26. On October 20, 2009, the Board's Investigator went to CVS to inspect the pharmacy
2 and investigate the complaint. No Pharmacist in Charge was present so the Pharmacists who
3 were on duty at the time, two other pharmacists assisted with the inspection.

4 27. During the inspection, the inspector observed a pharmacy technician hand a newly
5 prescribed medication to a patient's mother. The patient's mother was not offered or provided
6 with a pharmacist consultation for the medication by either of the pharmacists who were present.

7 **DRUG**

8 28. Norco, generic name hydrocodone/APAP, is a dangerous drug pursuant to section
9 4022 and a controlled substance pursuant to Health and Safety Code section 11056(e)(4) which is
10 used as a Narcotic Analgesic.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct against Respondent CVS Pharmacy for
13 Failure to Maintain Security of Controlled Substances)**

14 29. Respondent CVS Pharmacy is subject to disciplinary action under Code sections 4156
15 and 4301, subdivisions (j) and (o), for violating title 16, California Code of Regulations, section
16 1714(b) by failing to provide adequate security against theft or the loss of controlled substances,
17 as evidenced by the substantial loss of controlled substances over a seven month period of time
18 which was apparently never even noted. The facts supporting this cause are specified in
19 paragraphs 24-32 above and incorporated herein by reference.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct against Respondent CVS Pharmacy for
22 Failing to Notify Board of Controlled Substances Losses)**

23 30. Respondent CVS Pharmacy is subject to disciplinary action under Code sections 4156
24 and 4301, subdivisions (j) and (o), for violating title 16, California Code of Regulations, section
25 1715.6 by failing to report to the Board within 30 days the loss of controlled substances. The
26 facts supporting this cause are specified in paragraphs 24-32 above and incorporated herein by
27 reference.

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THIRD CAUSE FOR DISCIPLINE

**(Unprofessional Conduct against Respondent CVS Pharmacy for
Failing to Perform its Duty to Consult)**

31. Respondent CVS Pharmacy is subject to disciplinary action under Code sections 4156 and 4301, subdivisions (j) and (o), for violating title 16, California Code of Regulations, section 1707.2(b)(1)(A). During an inspection of the pharmacy, a pharmacy technician handed a newly prescribed medication to a patient's mother who was not offered or provided with a pharmacist consultation for the medication by either of the pharmacists who were present. The facts supporting this cause are specified in paragraphs 24-32 above and incorporated herein by reference.

FOURTH CAUSE FOR DISCIPLINE

**(Unprofessional Conduct against Pharmacist in Charge Respondent N. Nguyen for
Failure to Maintain Security of Controlled Substances)**

32. Respondent N. Nguyen is subject to disciplinary action under Code sections 4306.5, 4081, 4113, and 4301, subdivisions (j) and (o), for violating title 16, California Code of Regulations, section 1714(b) when he was Pharmacist in Charge of the Pharmacy he failed to provide adequate security against theft or the loss of controlled substances, as evidenced by the substantial loss of controlled substances over a seven month period of time which was apparently never even noted. The facts supporting this cause are specified in paragraphs 24-32 above and incorporated herein by reference.

FIFTH CAUSE FOR DISCIPLINE

**(Unprofessional Conduct against Pharmacist in Charge Respondent N. Nguyen for
Failing to Notify Board of Controlled Substances Losses)**

33. Respondent N. Nguyen is subject to disciplinary action under Code sections 4081, 4113, 4301, subdivisions (j) and (o), and 4306.5, for violating title 16, California Code of Regulations, section 1715.6 when as Pharmacist in Charge of the Pharmacy he failed to report the

1 loss of controlled substances to the Board within 30 days the loss. The facts supporting this cause
2 are specified in paragraphs 24-32 above and incorporated herein by reference.

3 PRAYER

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

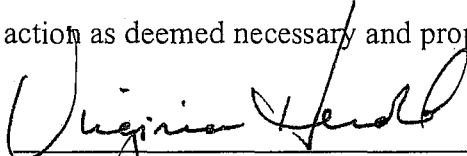
6 1. Revoking or suspending Pharmacy Permit Number PHY 47923, issued to Respondent
7 CVS Pharmacy;

8 2. Revoking or suspending Pharmacist License Number RPH 57940, issued to
9 Respondent N. Nguyen;

10 3. Ordering Respondents to pay the Board of Pharmacy the reasonable costs of the
11 investigation and enforcement of this case, pursuant to Business and Professions Code section
12 125.3;

13 4. Taking such other and further action as deemed necessary and proper.

14 DATED: 11/8/10



15 VIRGINIA HEROLD
16 Executive Officer
17 Board of Pharmacy
18 Department of Consumer Affairs
19 State of California
20 Complainant

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