

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

In the Matter of the Accusation Against:

Case No. 5120

TLC XPRESS PHARMACY INC. DBA
TLC XPRESS PHARMACY
10810 Warner Avenue, Suite 3-4
Fountain Valley, CA 92708

Pharmacy Permit No. PHY 49837,

and

KEVIN NHATHUY QUANG TRAN
10810 Warner Avenue, Suite 3-4
Fountain Valley, CA 92708

Pharmacist License No. RPH 56316

Respondents.

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 at 5:00 p.m. on May 4, 2017.

It is so ORDERED on April 4, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
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7

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

11 In the Matter of the Accusation Against:

Case No. 5120

12 **TLC XPRESS PHARMACY INC. DBA**
13 **TLC XPRESS PHARMACY**
14 **10810 Warner Avenue, Suite 3-4**
Fountain Valley, CA 92708

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **Pharmacy Permit No. PHY 49837,**

16 **and**

17 **KEVIN NHATHUY QUANG TRAN**
18 **10810 Warner Avenue, Suite 3-4**
Fountain Valley, CA 92708

19 **Pharmacist License No. RPH 56316**

20 Respondents.

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

24 PARTIES

25 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
26 (Board.) She brought this action solely in her official capacity and is represented in this matter by
27 Kamala D. Harris, Attorney General of the State of California, by Christina Thomas, Deputy
28 Attorney General.

1 TLC Express Pharmacy

2 2. On or about February 23, 2009, the Board of Pharmacy issued Pharmacy Permit No.
3 PHY 49837 to TLC Xpress Pharmacy Inc. dba TLC Xpress Pharmacy (Respondent Pharmacy).
4 The Pharmacy Permit was in full force and effect at all times relevant to the charges brought in
5 Accusation No. 5120, and will expire on February 1, 2017, unless renewed.

6 Kevin Nhathuy Quang Tran

7 3. On or about September 24, 2004, the Board of Pharmacy issued Pharmacist License
8 No. RPH 56316 to Kevin Nhathuy Quang Tran (Respondent Tran). The Pharmacist License was
9 in full force and effect at all times relevant to the charges brought herein and will expire May 31,
10 2018, unless renewed.

11 4. Respondent TLC Xpress Pharmacy Inc. and Respondent Tran are representing
12 themselves in this proceeding and have chosen not to exercise their right to be represented by
13 counsel.

14
15 JURISDICTION

16 5. Accusation No. 5120 was filed before the Board of Pharmacy, Department of
17 Consumer Affairs, and is currently pending against Respondents. The Accusation and all other
18 statutorily required documents were properly served on Respondents on May 2, 2015.
19 Respondents timely filed their Notice of Defense contesting the Accusation.

20 6. A copy of Accusation No. 5120 is attached as exhibit A and incorporated herein by
21 reference.

22 ADVISEMENT AND WAIVERS

23 7. Respondents have carefully read and understand the charges and allegations in
24 Accusation No. 5120. Respondents have also carefully read and understand the effects of this
25 Stipulated Settlement and Disciplinary Order.

26 8. Respondents are fully aware of their legal rights in this matter, including the right to a
27 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
28 their own expense; the right to confront and cross-examine the witnesses against them; the right

1 to present evidence and to testify on their own behalf; the right to the issuance of subpoenas to
2 compel the attendance of witnesses and the production of documents; the right to reconsideration
3 and court review of an adverse decision; and all other rights accorded by the California
4 Administrative Procedure Act and other applicable laws.

5 9. Respondents voluntarily, knowingly, and intelligently waive and give up each and
6 every right set forth above.

7 CULPABILITY

8 10. Respondents admit the truth of each and every charge and allegation in Accusation
9 No. 5120.

10 11. Respondents agree that the Pharmacy Permit and Pharmacist License are subject to
11 discipline and they agree to be bound by the Board's probationary terms as set forth in the
12 Disciplinary Orders below.

13 CONTINGENCY

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

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

26 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
27 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
28 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,

1 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
2 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
3 writing executed by an authorized representative of each of the parties.

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

7
8 **DISCIPLINARY ORDER**

9 TLC Xpress Pharmacy, Permit No. PHY49837

10 IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 49837 issued to Respondent
11 TLC Xpress Pharmacy Inc. dba TLC Xpress Pharmacy is revoked. However, the revocation is
12 stayed and Respondent is placed on probation for three (3) years on the following terms and
13 conditions:

14 1. **Obey All Laws**

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

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

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

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

1 **2. Report to the Board**

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

10 **3. Interview with the Board**

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

16 **4. Cooperate with Board Staff**

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

20 **5. Reimbursement of Board Costs**

21 As a condition precedent to successful completion of probation, Respondent owner shall
22 pay to the board its costs of investigation and prosecution in the amount of \$10,327.50. Failure to
23 pay costs by the deadline(s) as directed shall be considered a violation of probation. Respondent
24 TLC Xpress Pharmacy, shall be held jointly and severally liable for reimbursement of costs with
25 Respondent Kevin Nhathuy Quang Tran.

26 The filing of bankruptcy shall not relieve Respondents of their responsibility to reimburse
27 the board its costs of investigation and prosecution.

28 **6. Probation Monitoring Costs**

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

5 **7. Status of License**

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

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

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

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

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

26 Respondent owner shall also, by the effective date of this decision, arrange for the
27 continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written
28 notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that

1 identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating
2 as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five
3 days of its provision to the pharmacy's ongoing patients, Respondent owner shall provide a copy
4 of the written notice to the board. For the purposes of this provision, "ongoing patients" means
5 those patients for whom the pharmacy has on file a prescription with one or more refills
6 outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60)
7 days.

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

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

13 9. Notice to Employees

14 Respondent owner shall, upon or before the effective date of this decision, ensure that all
15 employees involved in permit operations are made aware of all the terms and conditions of
16 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.
17 If the notice required by this provision is posted, it shall be posted in a prominent place and shall
18 remain posted throughout the probation period. Respondent owner shall ensure that any
19 employees hired or used after the effective date of this decision are made aware of the terms and
20 conditions of probation by posting a notice, circulating a notice, or both. Additionally,
21 Respondent owner shall submit written notification to the board, within fifteen (15) days of the
22 effective date of this decision, that this term has been satisfied. Failure to submit such
23 notification to the board shall be considered a violation of probation. The term "Employees" as
24 used in this provision includes all full-time, part-time, volunteer, temporary and relief employees
25 and independent contractors employed or hired at any time during probation.

26 10. Owners and Officers: Knowledge of the Law

27 Respondent shall provide, within thirty (30) days after the effective date of this decision,
28 signed and dated statements from its owners, including any owner or holder of ten percent (10%)

1 or more of the interest in Respondent or Respondent's stock, and any officer, stating under
2 penalty of perjury that said individuals have read and are familiar with state and federal laws and
3 regulations governing the practice of pharmacy. The failure to timely provide said statements
4 under penalty of perjury shall be considered a violation of probation.

5 **11. Posted Notice of Probation**

6 Respondent owner shall prominently post a probation notice provided by the board in a
7 place conspicuous and readable to the public. The probation notice shall remain posted during
8 the entire period of probation. Respondent owner shall not, directly or indirectly, engage in any
9 conduct or make any statement which is intended to mislead or is likely to have the effect of
10 misleading any patient, customer, member of the public, or other person(s) as to the nature of and
11 reason for the probation of the licensed entity.

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

13 **12. Violation of Probation**

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

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

26 **13. Administrative Penalty**

27 As a condition precedent to successful completion of probation, Respondent Pharmacy shall
28

1 pay to the Board an administrative penalty in the amount of \$25,000. Respondent shall make said
2 payments on a payment plan approved by the Board. Respondent Tran and Respondent
3 Pharmacy shall be jointly and severally liable for the administrative penalty. However, in lieu of
4 the penalty the Board will accept \$25,000 worth of community service.

5 Should Respondent choose the community service option, within sixty (60) days of the
6 effective date of this decision, Respondent shall submit to the board or its designee, for prior
7 approval, a community service program in which Respondent shall provide free health care-
8 related services on a regular basis to a community or charitable facility or agency for at least 48
9 hours per year for the three (3) years of probation. Within thirty (30) days of board approval
10 thereof, Respondent shall submit documentation to the board demonstrating commencement of
11 the community service program. A record of this notification must be provided to the board upon
12 request. Respondent shall report on progress with the community service program in the
13 quarterly reports. Failure to timely submit, commence, or comply with the program shall be
14 considered a violation of probation.

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

18 **14. Completion of Probation**

19 Upon written notice by the board or its designee indicating successful completion of
20 probation, Respondent's license will be fully restored.

21
22 Kevin Nhathuy Quang Tran, Pharmacist License No. RPH 56316

23 IT IS HEREBY ORDERED that Pharmacy License No. RPH 56316 issued to Respondent
24 Tran is revoked. However, the revocation is stayed and Respondent is placed on probation for
25 three (3) years on the following terms and conditions:

26 **1. Obey All Laws**

27 Respondent shall obey all state and federal laws and regulations.
28

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

- 3 • an arrest or issuance of a criminal complaint for violation of any provision of the
4 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
5 substances laws
- 6 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
7 criminal complaint, information or indictment
- 8 • a conviction of any crime
- 9 • discipline, citation, or other administrative action filed by any state or federal agency
10 which involves Respondent's Pharmacy Permit or which is related to the practice of
11 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging
12 for any drug, device or controlled substance.

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

14 **2. Report to the Board**

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

23 **3. Interview with the Board**

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

1 **4. Cooperate with Board Staff**

2 Respondent shall cooperate with the board's inspection program and with the board's
3 monitoring and investigation of Respondent's compliance with the terms and conditions of
4 probation. Failure to cooperate shall be considered a violation of probation.

5 **5. Continuing Education**

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

8 **6. Notice to Employers**

9 During the period of probation, Respondent shall notify all present and prospective
10 employers of the decision in case number 5120 and the terms, conditions and restrictions imposed
11 on Respondent by the decision, as follows:

12 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
13 respondent undertaking any new employment, respondent shall cause their direct supervisor,
14 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
15 tenure of employment) and owner to report to the board in writing acknowledging that the listed
16 individual(s) has/have read the decision in case number 5120, and terms and conditions imposed
17 thereby. It shall be Respondent's responsibility to ensure that their employer(s) and/or
18 supervisor(s) submit timely acknowledgment(s) to the board.

19 If Respondent works for or is employed by or through a pharmacy employment service,
20 respondent must notify their direct supervisor, pharmacist-in-charge, and owner at every entity
21 licensed by the board of the terms and conditions of the decision in case number 5120 in advance
22 of the respondent commencing work at each licensed entity. A record of this notification must be
23 provided to the board upon request.

24 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
25 (15) days of Respondent undertaking any new employment by or through a pharmacy
26 employment service, respondent shall cause their direct supervisor with the pharmacy
27 employment service to report to the board in writing acknowledging that they has read the
28 decision in case number 5120 and the terms and conditions imposed thereby. It shall be

1 Respondent's responsibility to ensure that their employer(s) and/or supervisor(s) submit timely
2 acknowledgment(s) to the board.

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

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

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

12 During the period of probation, Respondent shall not supervise any intern pharmacist, be
13 the Pharmacist-in-Charge or designated Representative-in-Charge of any entity by the Board nor
14 serve as a consultant unless otherwise specified in this order. Assumption of any such
15 unauthorized supervision responsibilities shall be considered a violation of probation.

16 **8. Reimbursement of Board Costs**

17 As a condition precedent to successful completion of probation, Respondent shall pay to the
18 board its costs of investigation and prosecution in the amount of \$10,327.50. Failure to pay costs
19 by the deadline(s) as directed shall be considered a violation of probation. Respondent Tran shall
20 be held jointly and severally liable for reimbursement of costs with Respondent TLC Xpress
21 Pharmacy. The filing of bankruptcy shall not relieve Respondents of their responsibility to
22 reimburse the board its costs of investigation and prosecution.

23 **9. Probation Monitoring Costs**

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

28 **10. Status of License**

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

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

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

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

16 Upon acceptance of the surrender, Respondent shall relinquish their pocket and wall license
17 to the board within ten (10) days of notification by the board that the surrender is accepted.
18 Respondent may not reapply for any license from the board for three (3) years from the effective
19 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
20 of the date the application for that license is submitted to the board, including any outstanding
21 costs.

22
23 **12. Notification of a Change in Name, Residence Address, Mailing Address or
Employment**

24 Respondent shall notify the board in writing within ten (10) days of any change of
25 employment. Said notification shall include the reasons for leaving, the address of the new
26 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
27
28

1 shall further notify the board in writing within ten (10) days of a change in name, residence
2 address, mailing address, or phone number.

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

5 **13. Tolling of Probation**

6 Except during periods of suspension, respondent shall, at all times while on probation, be
7 employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any
8 month during which this minimum is not met shall toll the period of probation, i.e., the period of
9 probation shall be extended by one month for each month during which this minimum is not met.
10 During any such period of tolling of probation, respondent must nonetheless comply with all
11 terms and conditions of probation.

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

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

20 "Cessation of practice" means any calendar month during which respondent is
21 not practicing as a pharmacist for at 40 hours, as defined by Business and Professions
22 Code section 4000 et seq. "Resumption of practice" means any calendar month
23 during which respondent is practicing as a pharmacist for at least 40 hours as a
24 pharmacist as defined by Business and Professions Code section 4000 et seq.

25 **14. Violation of Probation**

26 If a Respondent has not complied with any term or condition of probation, the board shall
27 have continuing jurisdiction over Respondent, and probation shall automatically be extended,
28 until all terms and conditions have been satisfied or the board has taken other action as deemed

1 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
2 to impose the penalty that was stayed.

3 If Respondent violates probation in any respect, the board, after giving Respondent notice
4 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
5 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
6 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
7 a petition to revoke probation or an accusation is filed against Respondent during probation, the
8 board shall have continuing jurisdiction and the period of probation shall be automatically
9 extended until the petition to revoke probation or accusation is heard and decided.

10 **15. Completion of Probation**

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

13 **16. No Ownership of Additional Licensed Premises**

14 Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a
15 manager, administrator, member, officer, director, trustee, associate, or partner of any additional
16 business, firm, partnership, or corporation licensed by the board. If Respondent currently owns or
17 has any legal or beneficial interest in, or serves as a manager, administrator, member, officer,
18 director, trustee, associate, or partner of any business, firm, partnership, or corporation currently
19 or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold
20 that interest, but only to the extent of that position or interest as of the effective date of this
21 decision. Violation of this restriction shall be considered a violation of probation.

22 **17. Consultant for Owner or Pharmacist-In-Charge**

23 During the period of probation, Respondent shall not supervise any intern pharmacist or
24 serve as a consultant to any entity licensed by the board. Respondent may be a pharmacist-in-
25 charge. However, if during the period of probation Respondent serves as a pharmacist-in-charge,
26 Respondent shall retain an independent consultant at his own expense who shall be responsible
27 for reviewing pharmacy operations on monthly basis for compliance by Respondent with state
28 and federal laws and regulations governing the practice of pharmacy and for compliance by

1 Respondent with the obligations of a pharmacist-in-charge. The consultant may be changed to
2 quarterly upon approval of the board's designee. The consultant shall be a pharmacist licensed by
3 and not on probation with the board and whose name shall be submitted to the board or its
4 designee, for prior approval, within thirty (30) days of the effective date of this decision.
5 Respondent shall not be a pharmacist-in-charge at more than one pharmacy or at any pharmacy of
6 which they is not the sole owner. Failure to timely retain, seek approval of, or ensure timely
7 reporting by the consultant shall be considered a violation of probation.

8 ACCEPTANCE

9 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
10 stipulation and the effect it will have on my Pharmacy Permit and Pharmacist License. I enter
11 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,
12 and agree to be bound by the Decision and Order of the Board of Pharmacy.

13
14 DATED: 2/2/17

15
16 **TLC Xpress Pharmacy**
10810 Warner Ave Suite #3
Fountain Valley, CA 92708
17 P:714-465-2431 F:714-465-9744


18 TLC XPRESS PHARMACY INC. DBA TLC
19 XPRESS PHARMACY; KEVIN TRAN, PRESIDENT
20 *Respondent*

21 ENDORSEMENT

22 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
23 submitted for consideration by the Board of Pharmacy.

24 Dated:

Respectfully submitted,

25
26 KAMALA D. HARRIS
27 Attorney General of California
28 MARC D. GREENBAUM
Supervising Deputy Attorney General

CHRISTINA THOMAS
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 5120

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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:

Case No. 5120

12 **TLC XPRESS PHARMACY INC.,**
13 **DBA TLC XPRESS PHARMACY**
14 **10810 Warner Avenue, Suite 3-4**
Fountain Valley, CA 92708

ACCUSATION

15 **Pharmacy Permit No. PHY 49837**

16 **KEVIN NHATHUY QUANG TRAN**
17 **16436 Vernon Street**
Fountain Valley, CA 92708

18 **Pharmacist License No. RPH 56316**

19 Respondents.
20

21
22 Complainant alleges:

23 **PARTIES**

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

26 2. On or about February 23, 2009, the Board of Pharmacy issued Pharmacy Permit
27 Number PHY 49837 to TLC Xpress Pharmacy Inc., doing business as TLC Xpress Pharmacy
28

1 (Respondent TLC Xpress Pharmacy). The Pharmacy Permit was in full force and effect at all
2 times relevant to the charges brought herein and will expire on February 1, 2015, unless renewed.

3 3. On or about September 24, 2004, the Board of Pharmacy issued Pharmacist License
4 Number RPH 56316 to Kevin Nhathuy Quang Tran (Respondent Kevin Tran). The Pharmacist
5 License was in full force and effect at all times relevant to the charges brought herein and will
6 expire on May 31, 2014, unless renewed.

7 JURISDICTION

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

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

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

16 7. Section 4300.1 of the Code states:

17 The expiration, cancellation, forfeiture, or suspension of a board-issued license
18 by operation of law or by order or decision of the board or a court of law, the
19 placement of a license on a retired status, or the voluntary surrender of a license by a
20 licensee shall not deprive the board of jurisdiction to commence or proceed with any
investigation of, or action or disciplinary proceeding against, the licensee or to render
a decision suspending or revoking the license.

21 STATUTORY AND REGULATORY PROVISIONS

22 8. Section 4169 (a)(1) of the Code states:

23 A person may not do any of the following: Purchase, trade, sell, or transfer
24 dangerous drugs or dangerous devices at wholesale with a person or entity that is not
licensed with the board as a wholesaler.

25 9. Section 4301 of the Code states in pertinent part:

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

28 ...

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

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

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

10 COST RECOVERY

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

15 DRUGS

16 12. Drugs utilized to treat Human Immunodeficiency Virus (HIV) and Acquired Immune
17 Deficiency Syndrome (AIDS) including, abilify, actos, aptripla, baraclude, combivar, complea,
18 epzicom, gleevec, intelence, isentress, kaletra, norvir, prevista, reyataz, truvada, viramune, viread
19 and ziagen. These are dangerous drugs pursuant to Business and Professions Code section 4022
20 and possess a high resale and street dollar value.

21 FACTUAL ALLEGATIONS

22 13. Since February 23, 2009 and at all times mentioned herein, Respondent Kevin Tran
23 was the Pharmacist-in-Charge of Respondent TLC Express Pharmacy.

24 14. On or about April 10 and May 18, 2012, AIDS Healthcare Foundation, a nonprofit
25 organization whose mission is to provide cutting edge medicine and advocacy for HIV and AIDS
26 patients, regardless of ability to pay, filed a complaint with the Board alleging that Rochester
27 Enterprises, Inc. was engaged in a scheme whereby it knowingly and willfully offered HIV and
28 AIDS patients cash and in-kind inducements (i.e., gift cards, rent and utility subsidies) to transfer
their prescriptions for AIDS drugs, many of which were paid for by Medicare and Medicaid to
Respondent TLC Express Pharmacy and Beverly Hills Medical Plaza Pharmacy.

1 4126.5(a)(4) and 4081(a) for improperly furnishing drugs to a wholesaler and issued a fine.

2 Respondent subsequently entered into a stipulated settlement of the Citation.

3 b. On February 27, 2012, the Board issued Citation number CI 2011 51425 against
4 Respondent Kevin Tran for violating Business and Professions Code sections 4126.5(a)(4) and
5 4081(a) for improperly furnishing drugs to a wholesaler and issued a fine. Respondent
6 subsequently entered into a stipulated settlement of the Citation.

7 **PRAYER**

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

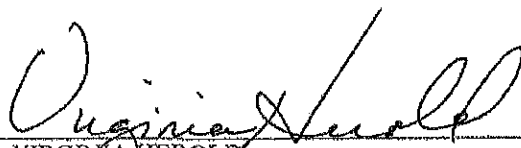
10 1. Revoking or suspending Pharmacy Permit Number PHY 49837, issued to TLC
11 Xpress Pharmacy Inc., dba TLC Xpress Pharmacy;

12 2. Revoking or suspending Pharmacist License Number RPH 56316, issued to Kevin
13 Nhathuy Quang Tran;

14 3. Ordering TLC Xpress Pharmacy Inc., dba TLC Xpress Pharmacy and Kevin Nhathuy
15 Quang Tran to pay the Board of Pharmacy the reasonable costs of the investigation and
16 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

18
19
20 DATED: 9/28/14


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

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