

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

In the Matter of the Accusation Against:

TINA THY PHAN
610 E. Romie Lane
Salinas, CA 93901

Pharmacist License No. RPH 67225

Respondent.

Case No. 5259

OAH No. 2015060321

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 February 24, 2016.

It is so ORDERED on January 25, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

11 In the Matter of the Accusation Against:
12 **TINA THY PHAN**
610 E. Romie Lane
13 Salinas, CA 93901
14 **Pharmacist License No. RPH 67225**
15 Respondent.

Case No. 5259
OAH No. 2015060321
**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 Helene E. Rouse, Deputy Attorney
23 General.

24 2. Respondent Tina Thy Phan ("Respondent") is representing herself in this proceeding
25 and has chosen not to exercise her right to be represented by counsel.

26 3. On or about July 16, 2012, the Board of Pharmacy issued Pharmacist License No.
27 RPH 67225 to Tina Thy Phan (Respondent). The Pharmacist License was in full force and effect
28

1 at all times relevant to the charges brought in Accusation No. 5259 and will expire on September
2 30, 2017, unless renewed.

3 JURISDICTION

4 4. Accusation No. 5259 was filed before the Board of Pharmacy (Board), Department
5 of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
6 statutorily required documents were properly served on Respondent on April 17, 2015.

7 Respondent timely filed her Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 5259 is attached as Exhibit A and incorporated herein by
9 reference.

10 ADVISEMENT AND WAIVERS

11 6. Respondent has carefully read, and understands the charges and allegations in
12 Accusation No. 5259. Respondent has also carefully read, and understands the effects of this
13 Stipulated Settlement and Disciplinary Order.

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

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

23 CULPABILITY

24 9. Respondent admits the truth of each and every charge and allegation in Accusation
25 No. 5259.

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

28 ///

1 CONTINGENCY

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

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

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

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

23 DISCIPLINARY ORDER

24 IT IS HEREBY ORDERED that Pharmacist License No. RPH 67225 issued to Respondent
25 Tina Thy Phan (Respondent) is revoked. However, the revocation is stayed and Respondent is
26 placed on probation for five (5) years, on the following terms and conditions:

27 1. **Obey All Laws**

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

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 pharmacist license 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 her
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 5259 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 her 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 5259, and terms and conditions imposed
17 thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s)
18 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 her 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 5259 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 employment
26 service, respondent shall cause her direct supervisor with the pharmacy employment service to
27 report to the board in writing acknowledging that she has read the decision in case number 5259
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1 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
2 that her employer(s) and/or supervisor(s) submit timely 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 the
13 pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board
14 nor 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 \$2,565.00. Respondent shall
19 make said payments as follows: payments shall be made over the first four years of probation.

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

23 The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to
24 reimburse the board its costs of investigation and prosecution.

25 **9. Probation Monitoring Costs**

26 Respondent shall pay any costs associated with probation monitoring as determined by the
27 board each and every year of probation. Such costs shall be payable to the board on a schedule as
28

1 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
2 be considered a violation of probation.

3 **10. Status of License**

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

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

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

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

19 Upon acceptance of the surrender, respondent shall relinquish her pocket and wall license to
20 the board within ten (10) days of notification by the board that the surrender is accepted.

21 Respondent may not reapply for any license from the board for three (3) years from the effective
22 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
23 of the date the application for that license is submitted to the board, including any outstanding
24 costs.

25 **12. Notification of a Change in Name, Residence Address, Mailing Address or**
26 **Employment**

27 Respondent shall notify the board in writing within ten (10) days of any change of
28 employment. Said notification shall include the reasons for leaving, the address of the new

1 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
2 shall further notify the board in writing within ten (10) days of a change in name, residence
3 address, mailing address, or phone number.

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

6 13. Tolling of Probation

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

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

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

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

26 14. Violation of Probation

27 If a respondent has not complied with any term or condition of probation, the board shall
28 have continuing jurisdiction over respondent, and probation shall automatically be extended, until

1 all terms and conditions have been satisfied or the board has taken other action as deemed
2 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
3 to impose the penalty that was stayed.

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

11 15. Completion of Probation

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

14 16. Pharmacists Recovery Program (PRP)

15 Within thirty (30) days of the effective date of this decision, respondent shall contact the
16 Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll,
17 successfully participate in, and complete the treatment contract and any subsequent addendums as
18 recommended and provided by the PRP and as approved by the board or its designee. The costs
19 for PRP participation shall be borne by the respondent.

20 If respondent is currently enrolled in the PRP, said participation is now mandatory and as of
21 the effective date of this decision is no longer considered a self-referral under Business and
22 Professions Code section 4362(c)(2). Respondent shall successfully participate in and complete
23 her current contract and any subsequent addendums with the PRP.

24 Failure to timely contact or enroll in the PRP, or successfully participate in and complete
25 the treatment contract and/or any addendums, shall be considered a violation of probation.

26 Probation shall be automatically extended until respondent successfully completes the PRP.
27 Any person terminated from the PRP program shall be automatically suspended by the board.
28 Respondent may not resume the practice of pharmacy until notified by the board in writing.

1 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a
2 licensed practitioner as part of a documented medical treatment shall result in the automatic
3 suspension of practice by respondent and shall be considered a violation of probation.

4 Respondent may not resume the practice of pharmacy until notified by the board in writing.

5 During suspension, respondent shall not enter any pharmacy area or any portion of the
6 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
7 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
8 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
9 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
10 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
11 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
12 and controlled substances. Respondent shall not resume practice until notified by the board.

13 During suspension, respondent shall not engage in any activity that requires the
14 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
15 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
16 designated representative for any entity licensed by the board.

17 Subject to the above restrictions, respondent may continue to own or hold an interest in any
18 licensed premises in which she holds an interest at the time this decision becomes effective unless
19 otherwise specified in this order.

20 Failure to comply with this suspension shall be considered a violation of probation.

21 Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not
22 timely paid to the PRP shall constitute a violation for probation. The board will collect unpaid
23 administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

24 17. Random Drug Screening

25 Respondent, at her own expense, shall participate in random testing, including but not
26 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
27 screening program as directed by the board or its designee. Respondent may be required to
28 participate in testing for the entire probation period and the frequency of testing will be

1 determined by the board or its designee. At all times, respondent shall fully cooperate with the
2 board or its designee, and shall, when directed, submit to such tests and samples for the detection
3 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its
4 designee may direct. Failure to timely submit to testing as directed shall be considered a violation
5 of probation. Upon request of the board or its designee, respondent shall provide documentation
6 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is
7 a necessary part of the treatment of the respondent. Failure to timely provide such documentation
8 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any
9 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment
10 shall be considered a violation of probation and shall result in the automatic suspension of
11 practice of pharmacy by respondent. Respondent may not resume the practice of pharmacy until
12 notified by the board in writing.

13 During suspension, respondent shall not enter any pharmacy area or any portion of the
14 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
15 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
16 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
17 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
18 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
19 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
20 and controlled substances. Respondent shall not resume practice until notified by the board.

21 During suspension, respondent shall not engage in any activity that requires the
22 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
23 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
24 designated representative for any entity licensed by the board.

25 Subject to the above restrictions, respondent may continue to own or hold an interest in any
26 licensed premises in which she holds an interest at the time this decision becomes effective unless
27 otherwise specified in this order.

28 Failure to comply with this suspension shall be considered a violation of probation.

1 **18. Abstain from Drugs and Alcohol Use**

2 Respondent shall completely abstain from the possession or use of alcohol, controlled
3 substances, dangerous drugs and their associated paraphernalia except when the drugs are
4 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon
5 request of the board or its designee, respondent shall provide documentation from the licensed
6 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the
7 treatment of the respondent. Failure to timely provide such documentation shall be considered a
8 violation of probation. Respondent shall ensure that she is not in the same physical location as
9 individuals who are using illicit substances even if respondent is not personally ingesting the
10 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia
11 not supported by the documentation timely provided, and/or any physical proximity to persons
12 using illicit substances, shall be considered a violation of probation.

13 **19. Prescription Coordination and Monitoring of Prescription Use**

14 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
15 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
16 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's
17 history with the use of alcohol and who will coordinate and monitor any prescriptions for
18 respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved
19 practitioner shall be provided with a copy of the board's Accusation and decision. A record of
20 this notification must be provided to the board upon request. Respondent shall sign a release
21 authorizing the practitioner to communicate with the board about respondent's treatment(s). The
22 coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to the
23 board on a quarterly basis for the duration of probation regarding respondent's compliance with
24 this condition. If any substances considered addictive have been prescribed, the report shall
25 identify a program for the time limited use of any such substances. The board may require that
26 the single coordinating physician, nurse practitioner, physician assistant or psychiatrist be a
27 specialist in addictive medicine, or consult a specialist in addictive medicine. Should respondent,
28 for any reason, cease supervision by the approved practitioner, respondent shall notify the board

1 immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement
2 physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice to the
3 board or its designee for its prior approval. Failure to timely submit the selected practitioner or
4 replacement practitioner to the board for approval, or to ensure the required reporting thereby on
5 the quarterly reports, shall be considered a violation of probation.

6 If at any time an approved practitioner determines that respondent is unable to practice
7 safely or independently as a pharmacist, the practitioner shall notify the board immediately by
8 telephone and follow up by written letter within three (3) working days. Upon notification from
9 the board or its designee of this determination, respondent shall be automatically suspended and
10 shall not resume practice until notified by the board that practice may be resumed.

11 During suspension, respondent shall not enter any pharmacy area or any portion of the
12 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
13 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
14 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
15 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
16 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
17 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
18 and controlled substances. Respondent shall not resume practice until notified by the board.

19 During suspension, respondent shall not engage in any activity that requires the
20 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
21 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
22 designated representative for any entity licensed by the board.

23 Subject to the above restrictions, respondent may continue to own or hold an interest in any
24 licensed premises in which she holds an interest at the time this decision becomes effective unless
25 otherwise specified in this order.

26 Failure to comply with this suspension shall be considered a violation of probation.

27 **20. Supervised Practice**

28 During the period of probation, respondent shall practice only under the supervision of a

1 licensed pharmacist not on probation with the board. Upon and after the effective date of this
2 decision, respondent shall not practice pharmacy and her license shall be automatically suspended
3 until a supervisor is approved by the board or its designee. The supervision shall be, as required
4 by the board or its designee, either:

5 Continuous – At least 75% of a work week

6 Substantial - At least 50% of a work week

7 Partial - At least 25% of a work week

8 Daily Review - Supervisor's review of probationer's daily activities within 24 hours

9 Within thirty (30) days of the effective date of this decision, respondent shall have her
10 supervisor submit notification to the board in writing stating that the supervisor has read the
11 decision in case number 5259 and is familiar with the required level of supervision as determined
12 by the board or its designee. It shall be the respondent's responsibility to ensure that her
13 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
14 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
15 acknowledgements to the board shall be considered a violation of probation.

16 If respondent changes employment, it shall be the respondent's responsibility to ensure that
17 her employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to
18 the board. Respondent shall have her new supervisor, within fifteen (15) days after employment
19 commences, submit notification to the board in writing stating the direct supervisor and
20 pharmacist-in-charge have read the decision in case number 5259 and is familiar with the level of
21 supervision as determined by the board. Respondent shall not practice pharmacy and her license
22 shall be automatically suspended until the board or its designee approves a new supervisor.
23 Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
24 acknowledgements to the board shall be considered a violation of probation.

25 Within ten (10) days of leaving employment, respondent shall notify the board in writing.

26 During suspension, respondent shall not enter any pharmacy area or any portion of the
27 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
28 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices

1 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
2 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
3 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
4 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
5 and controlled substances. Respondent shall not resume practice until notified by the board.

6 During suspension, respondent shall not engage in any activity that requires the
7 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
8 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
9 designated representative for any entity licensed by the board.

10 Subject to the above restrictions, respondent may continue to own or hold an interest in any
11 licensed premises in which she holds an interest at the time this decision becomes effective unless
12 otherwise specified in this order.

13 Failure to comply with this suspension shall be considered a violation of probation.

14 **21. No Ownership of Licensed Premises**

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

22 **22. Criminal Probation/Parole Reports**

23 Respondent shall provide a copy of the conditions of any criminal probation/parole to the
24 board, in writing, within ten (10) days of the issuance or modification of those conditions.
25 Respondent shall provide the name of her probation/parole officer to the board, in writing, within
26 ten (10) days after that officer is designated or a replacement for that officer is designated.
27 Respondent shall provide a copy of all criminal probation/parole reports to the board within ten
28 (10) days after respondent receives a copy of such a report. Failure to timely make any of the

1 submissions required hereby shall be considered a violation of probation.

2 23. Ethics Course

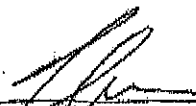
3 Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll
4 in a course in ethics, at respondent's expense, approved in advance by the board or its designee.
5 Failure to initiate the course during the first year of probation, and complete it within the second
6 year of probation, is a violation of probation.

7 Respondent shall submit a certificate of completion to the board or its designee within five
8 days after completing the course.

9 ACCEPTANCE

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

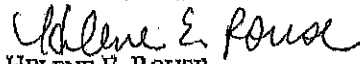
14
15 DATED: 10/26/15


16 TINA THY PHAN
17 Respondent

18 ENDORSEMENT

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

21 Dated: 10/26, 2015

Respectfully submitted,
22 KAMALA D. HARRIS
23 Attorney General of California
24 LINDA L. SUN
25 Supervising Deputy Attorney General

26 HELENE E. ROUSE
27 Deputy Attorney General
28 Attorneys for Complainant

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Exhibit A

Accusation No. 5259

1, KAMALA D. HARRIS
Attorney General of California
2 LINDA L. SUN
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Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

Case No. 5259

12 **TINA THY PHAN**
809 W. Cesar E. Chavez Blvd.
13 Los Angeles, CA 90012

ACCUSATION

14 Pharmacist License No. RPH 67225

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about July 16, 2012, the Board issued Pharmacist License No. RPH 67225 to
22 Tina Thy Phan (Respondent). The Pharmacist License was in full force and effect at all times
23 relevant to the charges brought herein and will expire on September 30, 2015, unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board, under the authority of the following
26 laws. All section references are to the Business and Professions Code unless otherwise indicated.

27 ///

28 ///

1, STATUTORY PROVISIONS

2 4. Section 490 states, in pertinent part:

3 (a) In addition to any other action that a board is permitted to take
4 against a licensee, a board may suspend or revoke a license on the ground that the
5 licensee has been convicted of a crime, if the crime is substantially related to the
6 qualifications, functions, or duties of the business or profession for which the license
7 was issued.

8 (b) Notwithstanding any other provision of law, a board may exercise any
9 authority to discipline a licensee for conviction of a crime that is independent of the
10 authority granted under subdivision (a) only if the crime is substantially related to the
11 qualifications, functions, or duties of the business or profession for which the licensee's
12 license was issued.

13 (c) A conviction within the meaning of this section means a plea or
14 verdict of guilty or a conviction following a plea of nolo contendere. An action that a
15 board is permitted to take following the establishment of a conviction may be taken
16 when the time for appeal has elapsed, or the judgment of conviction has been affirmed
17 on appeal, or when an order granting probation is made suspending the imposition of
18 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
19 the Penal Code.

20 5. Under Section 4300, the Board may discipline any license, for any reason provided in
21 the Pharmacy Law, (i.e., Sections 4000 et. seq.).

22 6. Section 4300.1 states:

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

7. Section 4301 states, in pertinent part:

The board shall take action against any holder of a license who is guilty of
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:

....

(h) The administering to oneself, of any controlled substance, or the use
of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
dangerous or injurious to oneself, to a person holding a license under this chapter, or
to any other person or to the public, or to the extent that the use impairs the ability of
the person to conduct with safety to the public the practice authorized by the license.

....

1 (l) The conviction of a crime substantially related to the qualifications,
2 functions, and duties of a licensee under this chapter. The record of conviction of a
3 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
4 States Code regulating controlled substances or of a violation of the statutes of this
5 state regulating controlled substances or dangerous drugs shall be conclusive evidence
6 of unprofessional conduct. In all other cases, the record of conviction shall be
7 conclusive evidence only of the fact that the conviction occurred. The board may
8 inquire into the circumstances surrounding the commission of the crime, in order to fix
9 the degree of discipline or, in the case of a conviction not involving controlled
10 substances or dangerous drugs, to determine if the conviction is of an offense
11 substantially related to the qualifications, functions, and duties of a licensee under this
12 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
13 contendere is deemed to be a conviction within the meaning of this provision. The
14 board may take action when the time for appeal has elapsed, or the judgment of
15 conviction has been affirmed on appeal or when an order granting probation is made
16 suspending the imposition of sentence, irrespective of a subsequent order under
17 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
18 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
19 dismissing the accusation, information, or indictment. . . .

20 8. Section 4402, subdivision (a) provides that any pharmacist license that is not renewed
21 within three years following its expiration may not be renewed, restored, or reinstated and shall be
22 canceled by operation of law at the end of the three-year period. Under Section 4402, subdivision
23 (d), the Board has authority to proceed with an accusation that has been filed prior to the
24 expiration of the three-year period.

25 **REGULATORY PROVISION**

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

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

COST RECOVERY

10. Section 125.3 provides that the Board may request the administrative law judge to
direct a licentiate found to have committed a violation or violations of the licensing act to pay a
sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONTROLLED SUBSTANCE / DANGEROUS DRUG

11. Codeine is a Schedule II controlled substance as defined in Health and Safety Code
section 11055 (b)(1)(G); and categorized as a dangerous drug pursuant to section 4022.

1. **FIRST CAUSE FOR DISCIPLINE**

2. **(Convictions of Substantially Related Crimes)**

3. 12. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
4. (I), in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent
5. was convicted of crimes substantially related to the qualifications, functions or duties of a licensee
6. which to a substantial degree evidence her present or potential unfitness to perform the functions
7. authorized by her license in a manner consistent with the public health, safety, or welfare, as
8. follows:

9. a. On or about April 30, 2014, after pleading nolo contendere and admitting to sustaining
10. two prior similar convictions, Respondent was convicted of one misdemeanor count of violating
11. Vehicle Code section 23152(b) [drive with an equal to or greater than 0.08% blood alcohol
12. content (BAC)] in the criminal proceeding entitled *The People of the State of California v. Tina*
13. *Thy Phan* (Super. Ct. Monterey County, 2014, No. MS319494A). The Court sentenced
14. Respondent to 120 days jail, placed her on five years probation, ordered her to complete a Second-
15. Offender Alcohol Program, and designated her as a Habitual Traffic Offender, for three years.

16. b. The circumstances underlying the conviction are that on or about March 4, 2014, after
17. drinking two beers, Respondent drove her vehicle the wrong way on a one-way street, towards a
18. police officer's vehicle. Respondent's BAC tested .15% / .15%. Respondent had a passenger in
19. her vehicle. Respondent admitted that she drank two beers before driving her vehicle.

20. c. On or about July 18, 2007, after pleading nolo contendere and acknowledging the use
21. of alcohol, Respondent was convicted of one interlineated misdemeanor count of violating Vehicle
22. Code section 23103 [wet: reckless], per Vehicle Code section 23103.5, in the criminal proceeding
23. entitled *The People of the State of California v. Tina Thy Phan* (Super. Ct. L.A. County, 2007,
24. No. 7WA01186). The Court placed Respondent on 24 months probation, and ordered her to
25. complete 12 Alcoholics Anonymous meetings.

26. d. The circumstances underlying the conviction are that on or about April 9, 2007, after
27. taking prescribed Codeine, Respondent also drank one beer and within 30 minutes drove a vehicle.
28. Respondent drove a vehicle while under the influence of alcohol at an unsafe speed, while

1. straddling highway lanes. Respondent's BAC tested .15%/ .16%.

2 e. On or about September 27, 2004, after pleading nolo contendere and acknowledging
3 the use of alcohol, Respondent was convicted of one amended misdemeanor count of violating
4 Vehicle Code section 23103 [wet: reckless] in the criminal proceeding entitled *The People of the*
5 *State of California v. Tina Thy Phan* (Super. Ct. L.A. County, 2004, No. 4SM03484). The Court
6 placed Respondent on 24 months probation and ordered her to complete a 12-Hour Alcohol
7 Program.

8 f. The circumstances underlying the conviction are that on or about July 2, 2004, while
9 under the influence of alcohol, Respondent drove a vehicle erratically and was observed driving the
10 vehicle into opposing traffic by crossing over double yellow lines. Respondent had a passenger in
11 her vehicle at the time. Respondent failed the field sobriety tests.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Dangerous Use of Alcohol)**

14 13. Respondent is subject to disciplinary action under section 4301, subdivision (h), on the
15 grounds of unprofessional conduct, in that Respondent used alcoholic beverages to the extent or in
16 a manner as to be dangerous or injurious to herself or others. Complainant refers to and by this
17 reference incorporates the allegations set forth above in paragraph 12, subparagraphs a through f,
18 inclusive, as though set forth fully.

19 **PRAYER**

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

22 1. Revoking or suspending Pharmacist License No. RPH 67225, issued to Tina Thy
23 Phan;

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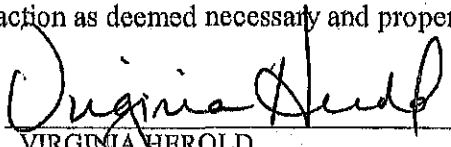
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2. Ordering Tina Thy Phan to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and

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

DATED: 3/31/15



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

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