

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

In the Matter of the Accusation Against:

**PHAN HEALTHCARE, INC., dba  
FOOTHILL RANCH MEDICAL PLAZA  
PHARMACY  
26750 Towne Center Drive, Suite C  
Foothill Ranch, CA 92610**

**Pharmacy Permit No. PHY 47237**

**and**

**TONY PHAN  
26750 Towne Center Drive, Suite C  
Foothill Ranch, CA 92610**

**Pharmacist License No. RPH 46350**

Case No. 5996

OAH No. 2017040617

**STIPULATED SETTLEMENT  
AND DISCIPLINARY ORDER**

Respondents.

**DECISION AND ORDER**

The attached Stipulated Settlement of License and 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 October 19, 2017.

It is so ORDERED on September 19, 2017.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_

Amy Gutierrez, Pharm.D.  
Board President

1 XAVIER BECERRA  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 DESIREE I. KELLOGG  
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*Attorneys for Complainant*

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. 5996

12 **PHAN HEALTHCARE, INC., DBA**  
13 **FOOTHILL RANCH MEDICAL PLAZA**  
14 **PHARMACY**  
26750 Towne Center Drive, Suite C  
Foothill Ranch, CA 92610

OAH No. 2017040617

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

15 Pharmacy Permit No. PHY 47237

16 **TONY PHAN**  
17 26750 Towne Center Drive, Suite C  
18 Foothill Ranch, CA 92610

19 Pharmacist License No. RPH 46350

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 Xavier Becerra, Attorney General of the State of California, by Desiree I. Kellogg, Deputy  
28 Attorney General.



1 documents; the right to reconsideration and court review of an adverse decision; and all other  
2 rights accorded by the California Administrative Procedure Act and other applicable laws.

3 9. Respondents voluntarily, knowingly, and intelligently waives and gives up each and  
4 every right set forth above.

5 CULPABILITY

6 10. Respondents understand and agree that the charges and allegations in Accusation No.  
7 5996, if proven at a hearing, constitute cause for imposing discipline upon their Pharmacy Permit  
8 and Pharmacist License.

9 11. For the purpose of resolving the Accusation without the expense and uncertainty of  
10 further proceedings, Respondents agree that, at a hearing, Complainant could establish a factual  
11 basis for the charges in the Accusation, and that Respondents hereby give up their rights to  
12 contest those charges.

13 12. Respondents agree that Pharmacy Permit Number PHY 47237 and Pharmacist  
14 License Number RPH 46350 are subject to discipline and they agree to be bound by the Board's  
15 probationary terms as set forth in the Disciplinary Order below.

16 CONTINGENCY

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

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



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

2 **2. Report to the Board**

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

11 **3. Interview with the Board**

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

17 **4. Cooperate with Board Staff**

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

21 **5. Continuing Education**

22 Respondent Tony Phan shall provide evidence of efforts to maintain skill and knowledge as  
23 a pharmacist as directed by the board or its designee.

24 **6. Notice to Employers**

25 During the period of probation, Respondent Tony Phan shall notify all present and  
26 prospective employers of the decision in case number 5996 and the terms, conditions and  
27 restrictions imposed 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 their 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 5996, and terms and conditions imposed  
6 thereby. It shall be Respondent Tony Phan's responsibility to ensure that his employer(s) and/or  
7 supervisor(s) submit timely acknowledgment(s) to the board.

8           If Respondent Tony Phan works for or is employed by or through a pharmacy employment  
9 service, respondent must notify their direct supervisor, pharmacist-in-charge, and owner at every  
10 entity licensed by the board of the terms and conditions of the decision in case number 5996 in  
11 advance of the Respondent Tony Phan commencing work at each licensed entity. A record of this  
12 notification must be 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 Tony Phan undertaking any new employment by or through a pharmacy  
15 employment service, Respondent Tony Phan shall cause his direct supervisor with the pharmacy  
16 employment service to report to the board in writing acknowledging that they has read the  
17 decision in case number 5996 and the terms and conditions imposed thereby. It shall be  
18 Respondent Tony Phan's responsibility to ensure that their employer(s) and/or supervisor(s)  
19 submit timely acknowledgment(s) to the board.

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

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

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

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

8           8.    **Reimbursement of Board Costs**

9           As a condition precedent to successful completion of probation, Respondents shall pay to  
10 the board its costs of investigation and prosecution in the amount of \$7,793.50. Respondents  
11 shall be jointly and severally liable for payment of these costs. Respondents shall make said  
12 payments in a payment plan to be approved by the Board.

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

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

18           9.    **Probation Monitoring Costs**

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

23           10. **Status of License**

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

27           If Respondent Foothill Ranch Medical Plaza Pharmacy submits an application to the Board,  
28 and the application is approved, for a change of location, change of permit or change of

1 ownership, the Board shall retain continuing jurisdiction over the license, and Respondent  
2 Foothill Plaza Ranch Medical Plaza Pharmacy shall remain on probation as determined by the  
3 Board.

4 If Respondents' licenses 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. Pharmacy Permit Surrender While on Probation/Suspension**

9 Following the effective date of this decision, should Respondent Foothill Ranch Medical  
10 Plaza Pharmacy discontinue business, Respondents may tender the premises license to the Board  
11 for surrender. The Board or its designee shall have the discretion whether to grant the request for  
12 surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance  
13 of the surrender of the license, Respondent Foothill Ranch Medical Plaza Pharmacy will no  
14 longer be subject to the terms and conditions of probation.

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

19 Respondent owner shall also, by the effective date of this decision, arrange for the  
20 continuation of care for ongoing patients of the pharmacy by, at minimum, providing a written  
21 notice to ongoing patients that specifies the anticipated closing date of the pharmacy and that  
22 identifies one or more area pharmacies capable of taking up the patients' care, and by cooperating  
23 as may be necessary in the transfer of records or prescriptions for ongoing patients. Within five  
24 days of its provision to the pharmacy's ongoing patients, Respondent owner shall provide a copy  
25 of the written notice to the Board. For the purposes of this provision, "ongoing patients" means  
26 those patients for whom the pharmacy has on file a prescription with one or more refills  
27 outstanding, or for whom the pharmacy has filled a prescription within the preceding sixty (60)  
28 days.

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

4 Respondent owner further stipulates that he or she shall reimburse the Board for its costs of  
5 investigation and prosecution prior to the acceptance of the surrender.

6 **12. Pharmacist License Surrender While on Probation/Suspension**

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

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

21 **13. Notice to Employees**

22 Respondent Foothill Ranch Medical Plaza Pharmacy shall, upon or before the effective date  
23 of this decision, ensure that all employees involved in permit operations are made aware of all the  
24 terms and conditions of probation, either by posting a notice of the terms and conditions,  
25 circulating such notice, or both. If the notice required by this provision is posted, it shall be  
26 posted in a prominent place and shall remain posted throughout the probation period. Respondent  
27 owner shall ensure that any employees hired or used after the effective date of this decision are  
28 made aware of the terms and conditions of probation by posting a notice, circulating a notice, or

1 both. Additionally, respondent owner shall submit written notification to the Board, within  
2 fifteen (15) days of the effective date of this decision, that this term has been satisfied. Failure to  
3 submit such notification to the Board shall be considered a violation of probation.

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

7 **14. Owners and Officers: Knowledge of the Law**

8 Respondent Foothill Ranch Medical Plaza Pharmacy shall provide, within thirty (30) days  
9 after the effective date of this decision, signed and dated statements from its owners, including  
10 any owner or holder of ten percent (10%) or more of the interest in Respondent or Respondent's  
11 stock, and any officer, stating under penalty of perjury that said individuals have read and are  
12 familiar with state and federal laws and regulations governing the practice of pharmacy. The  
13 failure to timely provide said statements under penalty of perjury shall be considered a violation  
14 of probation.

15 **15. Posted Notice of Probation**

16 Respondent Foothill Ranch Medical Plaza Pharmacy shall prominently post a probation  
17 notice provided by the Board in a place conspicuous and readable to the public. The probation  
18 notice shall remain posted during the entire period of probation.

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

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

24 **16. Notification of a Change in Name, Residence Address, Mailing Address or**  
25 **Employment**

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

1 Tony Phan shall further notify the board in writing within ten (10) days of a change in name,  
2 residence 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 **17. Tolling of Probation**

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

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

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

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

25 **18. Violation of Probation**

26 If Respondents have not complied with any term or condition of probation, the board shall  
27 have continuing jurisdiction over respondent, and probation shall automatically be extended, until  
28 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 Respondents violate 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 **19. Completion of Probation**

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

13 **20. Community Services Program**

14 Within sixty (60) days of the effective date of this decision, Respondent Foothill Ranch  
15 Medical Plaza Pharmacy shall submit to the board or its designee, for prior approval, a  
16 community service program in which Respondent Foothill Ranch Medical Plaza Pharmacy shall  
17 provide free health-care related services in prescription drug abuse education on a regular basis to  
18 a community or charitable facility or agency for at least 100 hours during the period of probation  
19 or 80 hours of community service if Respondent Foothill Ranch Medical Plaza Pharmacy makes a  
20 donation of \$8,000.00 worth of Nalaxone to a community or charitable facility or agency. Within  
21 thirty (30) days of board approval thereof, Respondent Foothill Ranch Medical Plaza Pharmacy  
22 shall submit documentation to the board demonstrating commencement of the community service  
23 program. A record of this notification must be provided to the board upon request. Respondent  
24 Foothill Ranch Medical Plaza Pharmacy shall report on progress with the community service  
25 program in the quarterly reports. Failure to timely submit, commence, or comply with the  
26 program shall be considered a violation of probation.

1           **21. Remedial Education**

2           Within sixty (60) days of the effective date of this decision, Respondent Tony Phan shall  
3 submit to the board or its designee, for prior approval, an appropriate program of remedial  
4 education related to prescription drug abuse and corresponding responsibility. The program of  
5 remedial education shall consist of at least six (6) hours each year, fifty (50) percent of which  
6 shall be in person, which shall be completed within six months at Respondent Tony Phan's own  
7 expense. All remedial education shall be in addition to, and shall not be credited toward,  
8 continuing education (CE) courses used for license renewal purposes.

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

13           Following the completion of each course, the board or its designee may require the  
14 respondent, at their own expense, to take an approved examination to test the Respondent Tony  
15 Phan's knowledge of the course. If the Respondent Tony Phan does not achieve a passing score  
16 on the examination, this failure shall be considered a violation of probation. Any such  
17 examination failure shall require Respondent Tony Phan to take another course approved by the  
18 board in the same subject area.

19           **22. No New Ownership of Licensed Premises**

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

1           **23. Consultant for Owner or Pharmacist-In-Charge**

2           During the period of probation, Respondent Tony Phan shall not supervise any intern  
3 pharmacist or serve as a consultant to any entity licensed by the board. Respondent Tony Phan  
4 may be a pharmacist-in-charge of Respondent Foothill Ranch Medical Plaza Pharmacy only.  
5 However, if during the period of probation Respondent Tony Phan serves as a pharmacist-in-  
6 charge at Foothill Ranch Medical Plaza Pharmacy, Respondent Tony Phan shall retain an  
7 independent consultant at his own expense who shall be responsible for reviewing pharmacy  
8 operations on a monthly basis for compliance by respondent Foothill Ranch Medical Plaza  
9 Pharmacy with state and federal laws and regulations governing the practice of pharmacy and for  
10 compliance by Respondent Tony Phan with the obligations of a pharmacist-in-charge. The  
11 consultant shall be a pharmacist licensed by and not on probation with the board and whose name  
12 shall be submitted to the board or its designee, for prior approval, within thirty (30) days of the  
13 effective date of this decision. Respondent Tony Phan shall not be a pharmacist-in-charge at  
14 more than one pharmacy or at any pharmacy of which they is not the sole owner. During the  
15 period of probation, the Board or its designee, retains the discretion to reduce the frequency of the  
16 pharmacist consultant's review of Respondent Foothill Ranch Medical Plaza Pharmacy's  
17 operations and Respondent Tony Phan's obligations as a pharmacist-in-charge. Failure to timely  
18 retain, seek approval of, or ensure timely reporting by the consultant shall be considered a  
19 violation of probation.

20           **24. Consultant Pharmacist Review of Pharmacy Operations**

21           During the period of probation, Respondent Foothill Ranch Medical Plaza Pharmacy shall  
22 retain an independent consultant at its own expense who shall be responsible for reviewing  
23 pharmacy operations on a monthly basis for compliance by Respondent Foothill Ranch Medical  
24 Plaza Pharmacy with state and federal laws and regulations governing the practice of pharmacy.  
25 The consultant shall be a pharmacist licensed by and not on probation with the board and whose  
26 name shall be submitted to the board or its designee, for prior approval, within thirty (30) days of  
27 the effective date of this decision. During the period of probation, the board or its designee  
28 ~~retains the discretion to reduce the frequency of the pharmacist consultant's review of Respondent~~

1 Foothill Ranch Medical Plaza Pharmacy's operations. Failure to timely retain, seek approval of,  
2 or ensure timely reporting by the consultant shall be considered a violation of probation.

3 **25. Ethics Course**

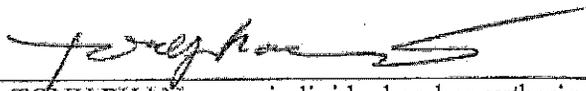
4 Within sixty (60) calendar days of the effective date of this decision, Respondent Tony  
5 Phan shall enroll in a course in ethics, at Respondent Tony Phan's expense, approved in advance  
6 by the board or its designee. Failure to initiate the course during the first year of probation, and  
7 complete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

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

10 ACCEPTANCE

11 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
12 discussed it with my attorneys, Tony J. Park, Pharm.D., J.D. and Ivan Petrzelka, Pharm.D., J.D.,  
13 M.B.A. I understand the stipulation and the effect it will have on my Pharmacy Permit No. PHY  
14 47237 and Pharmacist License No. RPH 46350. I enter into this Stipulated Settlement and  
15 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
16 Decision and Order of the Board of Pharmacy.

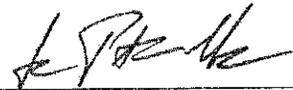
17  
18 DATED: 07/22/2017



19 TONY PHAN, as an individual and as authorized agent  
20 on behalf of PHAN HEALTHCARE, INC., DBA  
21 Foothill Ranch Medical Plaza  
22 PHARMACY  
23 Respondents

24 I have read and fully discussed with Respondents Phan Healthcare, Inc., dba Foothill Ranch  
25 Medical Plaza Pharmacy and Tony Phan, the terms and conditions and other matters contained in  
26 the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

27 DATED: July 22, 2017



28 IVAN PETRZELKA, PHARM.D., J.D., M.B.A.  
Attorney for Respondents

ENDORSEMENT

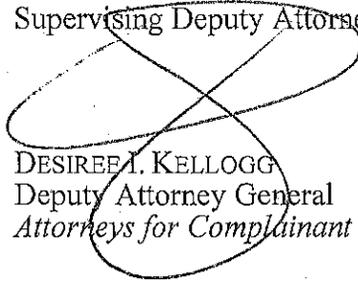
The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy.

DATED: \_\_\_\_\_

*7/29/17*

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
GREGORY J. SALUTE  
Supervising Deputy Attorney General

  
DESIREE I. KELLOGG  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 5996**

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2 GREGORY J. SALUTE  
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17 26750 Towne Center Drive, Suite C  
18 Foothill Ranch, CA 92610

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20 Respondents.

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22 Complainant alleges:

23 **PARTIES**

- 24 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official  
25 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 26 2. On or about July 12, 2005, the Board of Pharmacy issued Pharmacy Permit Number  
27 PHY 47237 to Phan Healthcare, Inc., doing business as Foothill Ranch Medical Plaza Pharmacy  
28 (Respondent Foothill Ranch Medical Plaza Pharmacy). The Pharmacy Permit was in full force

1 and effect at all times relevant to the charges brought herein and will expire on July 1, 2017,  
2 unless renewed.

3 3. On or about August 11, 1993, the Board of Pharmacy issued Pharmacist License  
4 Number RPH 46350 to Tony Phan (Respondent Tony Phan). The Pharmacist License was in full  
5 force and effect at all times relevant to the charges brought herein and will expire on July 31,  
6 2017, 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 4113(c) of the Code states:

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

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

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

27 ...

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

3 ...

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

9 ...

10 10. Section 4307(a) of the Code states that:

11 Any person who has been denied a license or whose license has been revoked  
12 or is under suspension, or who has failed to renew his or her license while it was  
13 under suspension, or who has been a manager, administrator, owner member, officer,  
14 director, associate, partner, or any other person with management or control of any  
15 partnership, corporation, firm, or association whose application for a license has been  
16 denied or revoked, is under suspension or has been placed on probation, and while  
17 acting as the manger, administrator, owner, member, officer, director, associate,  
18 partner, or any other person with management or control had knowledge or  
19 knowingly participated in any conduct for which the license was denied, revoked,  
20 suspended, or placed on probation, shall be prohibited from serving as a manger,  
21 administrator, owner, member, officer, director, associate, partner, or any other  
22 person with management or control of a licensee as follows:

23 (1) Where a probationary license is issued or where an existing license is placed  
24 on probation, this prohibition shall remain in effect for a period not to exceed five  
25 years.

26 (2) Where the license is denied or revoked, the prohibition shall continue until  
27 the license is issued or reinstated.

28 11. Health and Safety Code section 11153(a) states:

A prescription for a controlled substance shall only be issued for a legitimate  
medical purpose by an individual practitioner acting in the usual course of his or her  
professional practice. The responsibility for the proper prescribing and dispensing of  
controlled substances is upon the prescribing practitioner, but a corresponding  
responsibility rests with the pharmacist who fills the prescription. Except as  
authorized by this division, the following are not legal prescriptions: (1) an order  
purporting to be a prescription which is issued not in the usual course of professional  
treatment or in legitimate and authorized research; or (2) an order for an addict or  
habitual user of controlled substances, which is issued not in the course of  
professional treatment or as part of an authorized narcotic treatment program, for the  
purpose of providing the user with controlled substances, sufficient to keep him or  
her comfortable by maintaining customary use.

12. Health and Safety Code section 11162.1(a) states:

(a) The prescription forms for controlled substances shall be printed with the  
following features:

1 (1) A latent, repetitive 'void' pattern shall be printed across the entire front of  
2 the prescription blank; if a prescription is scanned or photocopied, the word "void"  
shall appear in a pattern across the entire front of the prescription.

3 (2) A watermark shall be printed on the backside of the prescription blank; the  
4 watermark shall consist of the words "California Security Prescription."

5 (3) A chemical void protection that prevents alteration by chemical washing.

6 (4) A feature printed in thermochromic ink.

7 (5) An area of opaque writing so that the writing disappears if the prescription  
is lightened.

8 (6) A description of the security features included on each prescription form.

9 (7) (A) Six quantity check off boxes shall be printed on the form so that the  
10 prescriber may indicate the quantity by checking the applicable box where the

11 following quantities shall appear:

12 1-24

13 25-49

14 50-74

15 75-100

16 101-150

17 151 and over.

18 (B) In conjunction with the quantity boxes, a space shall be provided to  
19 designate the units referenced in the quantity boxes when the drug is not in tablet or  
capsule form.

20 (8) Prescription blanks shall contain a statement printed on the bottom of the  
21 prescription blank that the "Prescription is void if the number of drugs prescribed is  
not noted."

22 (9) The preprinted name, category of licensure, license number, federal  
23 controlled substance registration number, and address of the prescribing practitioner.

24 (10) Check boxes shall be printed on the form so that the prescriber may  
indicate the number of refills ordered.

25 (11) The date of origin of the prescription.

26 (12) A check box indicating the prescriber's order not to substitute.

27 (13) An identifying number assigned to the approved security printer by the  
28 Department of Justice.

1 (14) (A) A check box by the name of each prescriber when a prescription form  
2 lists multiple prescribers.

3 (B) Each prescriber who signs the prescription form shall identify himself or  
4 herself as the prescriber by checking the box by his or her name.

5 13. Section 1761 of title 16, California Code of Regulations states:

6 (a) No pharmacist shall compound or dispense any prescription which contains  
7 any significant error, omission, irregularity, uncertainty, ambiguity or alteration.  
8 Upon receipt of any such prescription, the pharmacist shall contact the prescriber to  
9 obtain the information needed to validate the prescription.

10 (b) Even after conferring with the prescriber, a pharmacist shall not compound  
11 or dispense a controlled substance prescription where the pharmacist knows or has  
12 objective reason to know that said prescription was not issued for a legitimate  
13 medical purpose.

14 14. Section 1306.04(a) of title 21, Code of Federal Regulations states:

15 A prescription for a controlled substance to be effective must be issued for a  
16 legitimate medical purpose by an individual practitioner acting in the usual course of  
17 his professional practice. The responsibility for the proper prescribing and dispensing  
18 of controlled substances is upon the prescribing practitioner, but a corresponding  
19 responsibility rests with the pharmacist who fills the prescription. An order  
20 purporting to be a prescription issued not in the usual course of professional treatment  
21 or in legitimate and authorized research is not a prescription within the meaning and  
22 intent of section 309 of the Act (21 U.S.C. 829) and the person knowingly filling such  
23 a purported prescription, as well as the person issuing it, shall be subject to the  
24 penalties provided for violations of the provisions of law relating to controlled  
25 substances.

### 26 COST RECOVERY

27 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
28 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.

### DRUGS

16. Duragesic is a brand name for fentanyl, a Schedule II controlled substance pursuant to  
Health and Safety Code section 11055(c)(8) and a dangerous drug pursuant to Business and  
Professions Code section 4022.

17. Roxicodone is a brand name for oxycodone, a Schedule II controlled substance  
pursuant to Health and Safety Code section 11055(b)(1)(M) and a dangerous drug pursuant to  
Business and Professions Code section 4022.

1 18. Soma is a brand name for carisdoprodol, a Schedule IV controlled substance pursuant  
2 to title 21, Code of Federal Regulations, section 1308.14(c)(6) and is a dangerous drug pursuant  
3 to Business and Professions Code section 4022.

#### 4 FACTUAL ALLEGATIONS

5 19. From July 12, 2005 through the present, Respondent Tony Phan was the Pharmacist-  
6 in-Charge of Respondent Foothill Ranch Medical Plaza Pharmacy.

7 20. From June 13, 2013 to April 13, 2015, Respondents filled 339 controlled substance  
8 prescriptions issued on their face, by Dr. A.B, a family medicine practitioner. However, these  
9 prescriptions were forged and never written, nor authorized by Dr. A.B.

10 21. Individuals paid for the controlled substance prescriptions in cash and did not seek  
11 reimbursement from an insurance company or government agency.

12 22. Respondents dispensed fentanyl transdermal patches with directions to use them in  
13 frequencies greater than indicated by the manufacturer. This resulted in unusually high doses or  
14 high quantities of fentanyl dispensed to individuals by Respondents.

15 23. Respondents dispensed identical controlled substances, in the same strength and  
16 doses to individuals with the same last name and address.

17 24. Respondents filled prescriptions for controlled substances which were written in an  
18 identical fashion for multiple individuals. Namely, the prescriptions were written for the same  
19 combination of controlled substances in the same strength (the highest available) and doses to  
20 different individuals which were dispensed by Respondents, sometimes on the same day or every  
21 other day.

22 25. Individuals were prescribed the same drug therapy for multiple conditions or  
23 diagnoses which typically require separate drug therapies and specialists.

24 26. Respondents did not adequately verify or otherwise research whether the  
25 prescriptions described in paragraph 19 were written for a legitimate medical purpose before  
26 filling them.

27 27. On May 26, 2015, September 30, 2015, and March 30, 2016, Respondents filled three  
28 prescriptions (Numbers 2214238, 2214814 and 2215707) which were written on forms lacking an

1 identifying number of the security printer, a lot number and the phrase, "California Security  
2 Prescription" on the back of the forms. Additionally, Prescription Number 2214238 lacked a  
3 latent, repetitive "void" pattern printed across the front of the prescription and contained the  
4 phrase "Rx Invalid."

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Failing to Comply with Corresponding Responsibility**  
7 **for Legitimate Controlled Substance Prescriptions)**

8 28. Respondents are subject to disciplinary action under Code sections 4301(j) and (o),  
9 for violating Health and Safety Code section 11153(a) and section 1306.04(a) of title 21 of the  
10 Code of Federal Regulations, in that they failed to comply with their corresponding responsibility  
11 to ensure that controlled substances were dispensed for a legitimate medical purpose when  
12 Respondents furnished prescriptions for controlled substances even though "red flags" were  
13 present to indicate those prescriptions were not issued for a legitimate medical purpose, as set  
14 forth in paragraphs 18 through 27 above, which are incorporated herein by reference.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Dispensing Controlled Substance Prescriptions with Significant Errors, Omissions,**  
17 **Irregularities, Uncertainties, Ambiguities or Alterations)**

18 29. Respondents are subject to disciplinary action under Code section 4301(o), for  
19 violating title 16, California Code of Regulations, sections 1761(a) and (b), in that they dispensed  
20 prescriptions for controlled substances, which contained significant errors, omissions,  
21 irregularities, uncertainties, ambiguities or alterations, as set forth in paragraphs 18 through 27  
22 above, which are incorporated herein by reference.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Dispensing Controlled Substance Prescriptions Written on Unauthorized Forms)**

25 30. Respondents are subject to disciplinary action under Code section 4301(j), for  
26 violating Health and Safety Code section 11162.1(a), in that they dispensed prescriptions written  
27 on unauthorized forms, as set forth in paragraph 27 above, which are incorporated herein by  
28 reference.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 31. Respondents are subject to disciplinary action under Code section 4301 for  
4 unprofessional conduct in that they engaged in the activities described in paragraphs 18 through  
5 27 above, which are incorporated herein by reference.

6 **OTHER MATTERS**

7 32. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number  
8 PHY 47237 issued to Phan Healthcare, Inc., doing business as Foothill Ranch Medical Plaza  
9 Pharmacy, Phan Healthcare, Inc., doing business as Foothill Ranch Medical Plaza Pharmacy  
10 shall be prohibited from serving as a manager, administrator, owner, member, officer, director,  
11 associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 47237 is  
12 placed on probation or until Pharmacy Permit Number PHY 47237 is reinstated if it is revoked.

13 33. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number  
14 PHY 47237 issued to Phan Healthcare, Inc., doing business as Foothill Ranch Medical Plaza  
15 Pharmacy while Tony Phan has been an officer and owner and had knowledge of or knowingly  
16 participated in any conduct for which the licensee was disciplined, Tony Phan shall be prohibited  
17 from serving as a manager, administrator, owner, member, officer, director, associate, or partner  
18 of a licensee for five years if Pharmacy Permit Number PHY 47237 is placed on probation or  
19 until Pharmacy Permit Number PHY 47237 is reinstated if it is revoked.

20 34. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License  
21 Number RPH 46350 issued to Tony Phan, Tony Phan shall be prohibited from serving as a  
22 manager, administrator, owner, member, officer, director, associate, or partner of a licensee for  
23 five years if Pharmacist License Number RPH 46350 is placed on probation or until Pharmacist  
24 License Number RPH 46350 is reinstated if it is revoked.

25 **PRAYER**

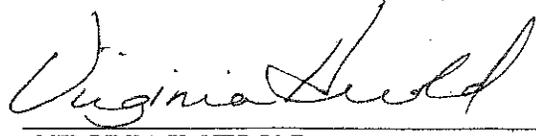
26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
27 and that following the hearing, the Board of Pharmacy issue a decision:  
28

- 1           1.    Revoking or suspending Pharmacy Permit Number PHY 47237, issued to Phan  
2 Healthcare, Inc., doing business as Foothill Ranch Medical Plaza Pharmacy;
- 3           2.    Revoking or suspending Pharmacist License Number RPH 46350, issued to Tony  
4 Phan;
- 5           3.    Prohibiting Phan Healthcare, Inc., doing business as Foothill Ranch Medical Plaza  
6 Pharmacy from serving as a manager, administrator, owner, member, officer, director, associate,  
7 or partner of a licensee for five years if Pharmacy Permit Number PHY 47237 is placed on  
8 probation or until Pharmacy Permit Number PHY 47237 is reinstated if Pharmacy Permit  
9 Number PHY 47237 issued to Phan Healthcare, Inc., doing business as Foothill Ranch Medical  
10 Plaza Pharmacy is revoked;
- 11          4.    Prohibiting Tony Phan from serving as a manager, administrator, owner, member,  
12 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number  
13 PHY 47237 is placed on probation or until Pharmacy Permit Number PHY 47237 is reinstated if  
14 Pharmacy Permit Number PHY 47237 issued to Phan Healthcare, Inc., doing business as  
15 Foothill Ranch Medical Plaza Pharmacy is revoked;
- 16          5.    Prohibiting Tony Phan from serving as a manager, administrator, owner, member,  
17 officer, director, associate, or partner of a licensee for five years if Pharmacist License Number  
18 RPH 46350 is placed on probation or until Pharmacist License Number RPH 46350 is reinstated  
19 if Pharmacist License Number RPH 46350 issued to Tony Phan is revoked;
- 20          6.    Ordering Phan Healthcare, Inc., doing business as Foothill Ranch Medical Plaza  
21 Pharmacy and Tony Phan to pay the Board of Pharmacy the reasonable costs of the investigation  
22 and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,  
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7. Taking such other and further action as deemed necessary and proper.

DATED: 3/1/17



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

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