

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

**In the Matter of the Accusation Against:**

**LOMA LINDA PHARMACY INC., DOUGLAS GROVER OLSON, PRESIDENT  
Pharmacy Permit No. PHY 44306;**

**KENNETH RAY HALLBAUER, Pharmacist License No. 44410;**

**DOUGLAS GROVER OLSON, Pharmacist License No. 26777;**

**NGA TAN NGUYEN Pharmacist License No. 43814;**

**YVONNE HONG LE, Pharmacist License No. 46587;**

**SON TRUNG TRAN, Pharmacist License No. 43488; and**

**THIEN-LY C. DOAN, Pharmacist License No. 50033**

**Respondents**

**Agency Case No. 6707**

**DECISION AND ORDER**

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

This Decision shall become effective at 5:00 p.m. on July 29, 2020.

It is so ORDERED on June 29, 2020.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Greg M. Lippe", written in a cursive style.

By

Greg Lippe  
Board President

1 XAVIER BECERRA  
Attorney General of California  
2 THOMAS L. RINALDI  
Supervising Deputy Attorney General  
3 CRISTINA FELIX  
Deputy Attorney General  
4 State Bar No. 195663  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 269-6321  
6 Facsimile: (916) 731-2126  
E-mail: Cristina.Felix@doj.ca.gov  
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 6707

13 **LOMA LINDA PHARMACY INC. DBA**  
14 **LOMA LINDA PHARMACY INC.**  
15 **Douglas G. Olson, President/Chairman**  
16 **25620 Barton Road**  
**Loma Linda, CA 92354**

OAH No. 2019120118

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER AS TO SON**  
**TRUNG TRAN ONLY**

17 **Original Permit Number PHY 44306**

18 **KENNETH RAY HALLBAUER**  
19 **26349 Snowden Avenue**  
**Redlands, CA 92374**

20 **Original Pharmacist License Number RPH**  
21 **44410**

22 **DOUGLAS GROVER OLSON**  
23 **25620 Barton Road**  
**Loma Linda, CA 92354**

24 **Original Pharmacist License Number RPH**  
25 **26777**

26 **NGA TAN NGUYEN**  
27 **2229 Smokewood Avenue**  
**Fullerton, CA 92831**

28 **Original Pharmacist License Number RPH**

43814

**YVONNE HONG LE**  
**15300 Magnolia Street #34**  
**Westminster, CA 92683**

**Original Pharmacist License Number RPH**  
**46587**

**SON TRUNG TRAN**  
**150 Via De La Valle**  
**Lake Elsinore, CA 92532**

**Original Pharmacist License Number RPH**  
**43488**

**THIEN-LY C. DOAN**  
**710 Creekside Drive**  
**Redlands, CA 92373**

**Original Pharmacist License Number RPH**  
**50033**

Respondents.

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

**PARTIES**

1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Cristina Felix, Deputy Attorney General.

2. Respondent Son Trung Tran (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about July 26, 1990, the Board of Pharmacy issued Pharmacist License Number RPH 43488 to Respondent. The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2020, unless renewed.

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1 **JURISDICTION**

2 4. Accusation No. 6707 was filed before the Board, and is currently pending against  
3 Respondent. The Accusation and all other statutorily required documents were properly served  
4 on Respondent on August 28, 2019. Respondent timely filed his Notice of Defense contesting the  
5 Accusation.

6 5. A copy of Accusation No. 6707 is attached as exhibit A and incorporated herein by  
7 reference.

8 **ADVISEMENT AND WAIVERS**

9 6. Respondent has carefully read, and understands the charges and allegations in  
10 Accusation No. 6707. Respondent has also carefully read, and understands the effects of this  
11 Stipulated Settlement and Disciplinary Order.

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

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

21 **CULPABILITY**

22 9. Respondent admits the truth of each and every charge and allegation in Accusation  
23 No. 6707.

24 10. Respondent agrees that his Pharmacist License is subject to discipline and they agree  
25 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

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**CONTINGENCY**

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

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

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

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

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**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Pharmacist License No. RPH 43488 issued to Respondent Son Trung Tran is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

**1. Obey All Laws**

Respondent shall obey all state and federal laws and regulations.

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

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state or federal agency which involves respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

**2. Report to the Board**

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation.

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1 Failure to submit timely reports in a form as directed shall be considered a violation of  
2 probation. Any period(s) of delinquency in submission of reports as directed may be added to the  
3 total period of probation. Moreover, if the final probation report is not made as directed,  
4 probation shall be automatically extended until such time as the final report is made and accepted  
5 by the board.

6 **3. Interview with the Board**

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

12 **4. Cooperate with Board Staff**

13 Respondent shall timely cooperate with the board's inspection program and with the board's  
14 monitoring and investigation of respondent's compliance with the terms and conditions of his  
15 probation, including but not limited to: timely responses to requests for information by board  
16 staff; timely compliance with directives from board staff regarding requirements of any term or  
17 condition of probation; and timely completion of documentation pertaining to a term or condition  
18 of probation. Failure to timely cooperate shall be considered a violation of probation.

19 **5. Continuing Education**

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

22 **6. Reporting of Employment and Notice to Employers**

23 During the period of probation, respondent shall notify all present and prospective  
24 employers of the decision in case number 6707 and the terms, conditions and restrictions imposed  
25 on respondent by the decision, as follows:

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1           Within thirty (30) days of the effective date of this decision, and within ten (10) days of  
2           undertaking any new employment, respondent shall report to the board in writing the name,  
3           physical address, and mailing address of each of his employer(s), and the name(s) and telephone  
4           number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in- charge, designated  
5           representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work  
6           schedule, if known. Respondent shall also include the reason(s) for leaving the prior  
7           employment. Respondent shall sign and return to the board a written consent authorizing the  
8           board or its designee to communicate with all of respondent's employer(s) and supervisor(s), and  
9           authorizing those employer(s) or supervisor(s) to communicate with the board or its designee,  
10          concerning respondent's work status, performance, and monitoring. Failure to comply with the  
11          requirements or deadlines of this condition shall be considered a violation of probation.

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 (a) his direct supervisor, (b)  
14          his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other  
15          compliance supervisor, and (c) the owner or owner representative of his employer, to report to the  
16          board in writing acknowledging that the listed individual(s) has/have read the decision in case  
17          number 6707, and terms and conditions imposed thereby. If one person serves in more than one  
18          role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's  
19          responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the  
20          event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term  
21          of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in  
22          writing within fifteen (15) days of the change acknowledging that he or she has read the decision  
23          in case number 6707, and the terms and conditions imposed thereby.

24          If respondent works for or is employed by or through an employment service, respondent  
25          must notify the person(s) described in (a), (b), and (c) above at every his licensed by the board of  
26          the decision in case number 6707, and the terms and conditions imposed thereby in advance of  
27          respondent commencing work at such licensed entity. A record of this notification must be  
28          provided to the board upon request.

1 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
2 (15) days of respondent undertaking any new employment by or through an employment service,  
3 respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service  
4 to report to the board in writing acknowledging that he or she has read the decision in case  
5 number, and the terms and conditions imposed thereby. It shall be respondent's responsibility to  
6 ensure that these acknowledgment(s) are timely submitted to the board.

7 Failure to timely notify present or prospective employer(s) or failure to cause the identified  
8 person(s) with that/those employer(s) to submit timely written acknowledgments to the board  
9 shall be considered a violation of probation.

10 "Employment" within the meaning of this provision includes any full-time, part-time,  
11 temporary, relief, or employment/management service position as a pharmacist, or any position  
12 for which a pharmacist is a requirement or criterion for employment, whether the respondent is an  
13 employee, independent contractor or volunteer.

14 **7. Notification of Change(s) in Name, Address(es), or Phone Number(s)**

15 Respondent shall further notify the board in writing within ten (10) days of any change in  
16 name, residence address, mailing address, e-mail address or phone number.

17 Failure to timely notify the board of any change in employer, name, address, or phone  
18 number shall be considered a violation of probation.

19 **8. Restrictions on Supervision and Oversight of Licensed Facilities**

20 During the period of probation, respondent shall not supervise any intern pharmacist, be the  
21 pharmacist-in-charge, designated representative-in-charge, responsible manager or other  
22 compliance supervisor of any entity licensed by the board, nor serve as a consultant. Assumption  
23 of any such unauthorized supervision responsibilities shall be considered a violation of probation.

24 **9. Reimbursement of Board Costs**

25 As a condition precedent to successful completion of probation, respondent shall pay to the  
26 board its costs of investigation and prosecution in the amount of \$3,500. Respondent shall pay  
27 these costs no later than one (1) year prior to the end of probation.  
28

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

4        **10. Probation Monitoring Costs**

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

9        **11. Status of License**

10       Respondent shall, at all times while on probation, maintain an active, current Pharmacist  
11 License with the board, including any period during which suspension or probation is tolled.  
12 Failure to maintain an active, current Pharmacist License shall be considered a violation of  
13 probation.

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

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

19       Following the effective date of this decision, should respondent cease practice due to  
20 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,  
21 respondent may relinquish his license, including any indicia of licensure issued by the board,  
22 along with a request to surrender the license. The board or its designee shall have the discretion  
23 whether to accept the surrender or take any other action it deems appropriate and reasonable.  
24 Upon formal acceptance of the surrender of the license, respondent will no longer be subject to  
25 the terms and conditions of probation. This surrender constitutes a record of discipline and shall  
26 become a part of the respondent's license history with the board.

27       Upon acceptance of the surrender, respondent shall relinquish his pocket and/or wall  
28 license, including any indicia of licensure not previously provided to the board within ten (10)

1 days of notification by the board that the surrender is accepted if not already provided.

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

6 **13. Practice Requirement – Extension 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 eighty (80) hours per calendar month.  
9 Any month during which this minimum is not met shall extend the period of probation by one  
10 month. During any such period of insufficient employment, respondent must nonetheless comply  
11 with all terms and conditions of probation, unless respondent receives a waiver in writing from  
12 the board or its designee.

13 If respondent does not practice as a pharmacist in California for the minimum number of  
14 hours in any calendar month, for any reason (including vacation), respondent shall notify the  
15 board in writing within ten (10) days of the conclusion of that calendar month. This notification  
16 shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the  
17 interruption or reduction in practice; and the anticipated date(s) on which respondent will resume  
18 practice at the required level. Respondent shall further notify the board in writing within ten (10)  
19 days following the next calendar month during which respondent practices as a pharmacist in  
20 California for the minimum of hours. Any failure to timely provide such notification(s) shall be  
21 considered a violation of probation.

22 It is a violation of probation for respondent's probation to be extended pursuant to the  
23 provisions of this condition for a total period, counting consecutive and non-consecutive months,  
24 exceeding thirty-six (36) months. The board or its designee may post a notice of the extended  
25 probation period on its website.

26 **14. Violation of Probation**

27 If respondent has not complied with any term or condition of probation, the board shall  
28 have continuing jurisdiction over respondent, and the board shall provide notice to respondent



1 that probation shall automatically be extended, until all terms and conditions have been satisfied  
2 or the board has taken other action as deemed appropriate to treat the failure to comply as a  
3 violation of probation, to terminate probation, and to impose the penalty that was stayed. The  
4 board or its designee may post a notice of the extended probation period on its website.

5 If respondent violates probation in any respect, the board, after giving respondent notice  
6 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that  
7 was stayed. If a petition to revoke probation or an accusation is filed against respondent during  
8 probation, or the preparation of an accusation or petition to revoke probation is requested from  
9 the Office of the Attorney General, the board shall have continuing jurisdiction and the period of  
10 probation shall be automatically extended until the petition to revoke probation or accusation is  
11 heard and decided.

#### 12 15. **Completion of Probation**

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

#### 15 16. **Remedial Education**

16 Within sixty (60) days of the effective date of this decision, respondent shall submit to the  
17 board or its designee, for prior approval, an appropriate program of remedial education related to  
18 drug diversion, safe opioid dispensing and prescription requirements. The program of remedial  
19 education shall consist of a total of thirty (30) hours, with a minimum of at least ten (10) hours  
20 each year of probation, at respondent's own expense, and at least 50% of the education hours must  
21 be in-person and/or live webinar training. All remedial education shall be in addition to, and shall  
22 not be credited toward, continuing education (CE) courses used for license renewal purposes for  
23 pharmacists.

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

1 Following the completion of each course, the board or its designee may require the  
2 respondent, at his own expense, to take an approved examination to test the respondent's  
3 knowledge of the course. If the respondent does not achieve a passing score on the examination  
4 that course shall not count towards satisfaction of this term. Respondent shall take another course  
5 approved by the board in the same subject area.

6 Respondent shall be restricted from the practice of pharmacist until the remedial education  
7 program has been successfully completed.

8 **17. Diversion Training Program.** Within the first year of probation, respondent shall  
9 enroll in the board's diversion training program, "Prescription Drug Abuse and Diversion What a  
10 Pharmacist Needs to Know," at respondent's expense. Respondent shall provide proof of  
11 enrollment upon request. Within five (5) days of completion, respondent shall submit a copy of  
12 the certificate of completion to the board or its designee. Failure to timely enroll in the program,  
13 to initiate the program during the first year of probation, to successfully complete it before the  
14 end of the second year of probation, or to timely submit proof of completion to the board or its  
15 designee, shall be considered a violation of probation.

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1  
2 ACCEPTANCE

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

7  
8 DATED: 3/13/2020

  
SON TRUNG TRAN  
Respondent

9  
10  
11 ENDORSEMENT

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

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

Respectfully submitted,

15  
16 XAVIER BECERRA  
Attorney General of California  
17 THOMAS L. RINALDI  
Supervising Deputy Attorney General

18  
19 CRISTINA FELIX  
Deputy Attorney General  
20 Attorneys for Complainant

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22  
23  
24 LA2019501607  
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1  
2 ACCEPTANCE

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

7  
8 DATED: \_\_\_\_\_

9 SON TRUNG TRAN  
10 *Respondent*

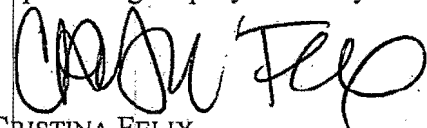
11 ENDORSEMENT

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

14 DATED: 03/27/2020

15 Respectfully submitted,

16 XAVIER BECERRA  
17 Attorney General of California  
18 THOMAS L. RINALDI  
19 Supervising Deputy Attorney General

20   
21 CRISTINA FELIX  
22 Deputy Attorney General  
23 *Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 6707**

XAVIER BECERRA  
Attorney General of California  
THOMAS L. RINALDI  
Supervising Deputy Attorney General  
CRISTINA FELIX  
Deputy Attorney General  
State Bar No. 195663  
300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
Telephone: (213) 897-2455  
Facsimile: (213) 897-2804  
E-mail: Cristina.Felix@doj.ca.gov  
*Attorneys for Complainant*

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

In the Matter of the Accusation Against:

Case No. 6707

**LOMA LINDA PHARMACY INC. DBA  
LOMA LINDA PHARMACY INC.  
Douglas G. Olson, President/Chairman  
25620 Barton Road  
Loma Linda, CA 92354**

**ACCUSATION**

**Original Permit Number PHY 44306**

**KENNETH RAY HALLBAUER  
26349 Snowden Avenue  
Redlands, CA 92374**

**Original Pharmacist License Number RPH  
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**150 Via De La Valle**  
**Lake Elsinore, CA 92532**

**Original Pharmacist License Number RPH**  
**43488**

**THIEN-LY C. DOAN**  
**710 Creekside Drive**  
**Redlands, CA 92373**

**Original Pharmacist License Number RPH**  
**50033**

Respondents.

Complainant alleges:

**PARTIES**

1. Anne Sodergren (Complainant) brings this Accusation solely in her official capacity as the Interim Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about September 17, 1999, the Board of Pharmacy issued Pharmacy Permit Number PHY 44306 Loma Linda Pharmacy, Inc. dba Loma Linda Pharmacy Inc. (Respondent Loma Linda Pharmacy). The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein and will expire on September 1, 2019, unless renewed. Douglas G. Olson is, and has been, the President and Chairman since September 17, 1999. Respondent Kenneth Hallbauer (Respondent Hallbauer) has been the Pharmacist-in Charge since December 31, 2009.

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3. On or about August 8, 1991, the Board of Pharmacy issued Pharmacist Number 44410 to Respondent Hallbauer. The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2020, unless renewed.

4. On or about August 4, 1970, the Board of Pharmacy issued Pharmacist Number RPH 26777 to Respondent Douglas Grover Olson (Respondent Olson). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2020, unless renewed.

5. On or about August 14, 1990, the Board of Pharmacy issued Pharmacist Number RPH 43814 to Respondent Nga Tan Nguyen (Respondent Nguyen). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2020, unless renewed.

6. On or about August 18, 1993, the Board of Pharmacy issued Pharmacist Number RPH 46587 to Respondent Yvonne Hong Le (Respondent Le). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2021, unless renewed.

7. On or about July 26, 1990, the Board of Pharmacy issued Pharmacist Number RPH 43488 to Respondent Son Trung Tran (Respondent Tran). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2020, unless renewed.

8. On or about Thien-Ly C. Doan, the Board of Pharmacy issued Pharmacist Number RPH 50033 to Respondent Thien-Ly C. Doan (Respondent Doan). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2021, unless renewed.

## JURISDICTION

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

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1           10. Section 118, subdivision (b), of the Code provides that the suspension/expiration/  
2       surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to  
3       proceed with a disciplinary action during the period within which the license may be renewed,  
4       restored, reissued or reinstated.

5           11. Section 4300 of the Code states:

6           (a) Every license issued may be suspended or revoked.

7           (b) The board shall discipline the holder of any license issued by the board, whose  
8       default has been entered or whose case has been heard by the board and found guilty,  
      by any of the following methods:

9               (1) Suspending judgment.

10              (2) Placing him or her upon probation.

11              (3) Suspending his or her right to practice for a period not exceeding on  
12       year.

13              (4) Revoking his or her license.

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

16       ...

17       (e) The proceedings under this article shall be conducted in accordance with Chapter  
18       5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code,  
19       and the board shall have all the powers granted therein. The action shall be final,  
      except that the propriety of the action is subject to review by the superior court  
      pursuant to Section 1094.5 of the Code of Civil Procedure.

20           12. Section 4300.1 of the Code states:

21       The expiration, cancellation, forfeiture, or suspension of a board-issued license by  
22       operation of law or by order or decision of the board or a court of law, the placement  
23       of a license on a retired status, or the voluntary surrender of a license by a licensee  
24       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.

25           13. Section 4307 of the Code states:

26           (a) Any person who has been denied a license or whose license has been revoked or is  
27       under suspension, or who has failed to renew his or her license while it was under  
28       suspension, or who has been a manager, administrator, owner, member, officer,  
      director, associate, partner, or any other person with management or control of any

partnership, corporation, trust, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, partner, or any other person with management or control had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, partner, or in any other position with management or control of a licensee as follows:

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

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

(b) "Manager, administrator, owner, member, officer, director, associate, or partner," as used in this section and Section 4308, may refer to a pharmacist or to any other person who serves in that capacity in or for a licensee.

(c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. However, no order may be issued in that case except as to a person who is named in the caption, as to whom the pleading alleges the applicability of this section, and where the person has been given notice of the proceeding as required by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. The authority to proceed as provided by this subdivision shall be in addition to the board's authority to proceed under Section 4339 or any other provision of law.

### **STATUTORY AUTHORITY**

14. Section 4301 of the Code states:

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

...

(c) Gross negligence.

(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.

...

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

...

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

1 ...”

2 15. Section 4306.5 of the Code states:

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

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

7 (b) Acts or omissions that involve, in whole or in part, the failure to exercise or  
8 implement his or her best professional judgment or corresponding responsibility with  
regard to the dispensing or furnishing of controlled substances, dangerous drugs, or  
dangerous devices, or with regard to the provision of services.

9 (c) Acts or omissions that involve, in whole or in part, the failure to consult  
10 appropriate patient, prescription, and other records pertaining to the performance of  
any pharmacy function.

11 (d) Acts or omissions that involve, in whole or in part, the failure to fully maintain  
12 and retain appropriate patient-specific information pertaining to the performance of  
any pharmacy function.

13 16. Section 4022 of the Code states

14 “Dangerous drug” or “dangerous device” means any drug or device unsafe for self-  
15 use in humans or animals, and includes the following:

16 (a) Any drug that bears the legend: “Caution: federal law prohibits dispensing without  
17 prescription,” “Rx only,” or words of similar import.

18 (b) Any device that bears the statement: “Caution: federal law restricts this device to  
19 sale by or on the order of a \_\_\_\_\_,” “Rx only,” or words of similar import, the blank to  
be filled in with the designation of the practitioner licensed to use or order use of the  
device.

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

22 17. Section 4059 of the Code states:

23 (a) A person may not furnish any dangerous drug, except upon the prescription of a  
physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
24 pursuant to Section 3640.7. A person may not furnish any dangerous device, except  
upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or  
naturopathic doctor pursuant to Section 3640.7.

25 (b) This section does not apply to the furnishing of any dangerous drug or dangerous  
26 device by a manufacturer, wholesaler, or pharmacy to each other or to a physician,  
dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to  
27 Section 3640.7, or to a laboratory under sales and purchase records that correctly give  
the date, the names and addresses of the supplier and the buyer, the drug or device,  
28 and its quantity. This section does not apply to the furnishing of any dangerous device

1 by a manufacturer, wholesaler, or pharmacy to a physical therapist acting within the  
2 scope of his or her license under sales and purchase records that correctly provide the  
3 date the device is provided, the names and addresses of the supplier and the buyer, a  
4 description of the device, and the quantity supplied.

5 (c) A pharmacist, or a person exempted pursuant to Section 4054, may distribute  
6 dangerous drugs and dangerous devices directly to dialysis patients pursuant to  
7 regulations adopted by the board. The board shall adopt any regulations as are  
8 necessary to ensure the safe distribution of these drugs and devices to dialysis patients  
9 without interruption thereof. A person who violates a regulation adopted pursuant to  
10 this subdivision shall be liable upon order of the board to surrender his or her  
11 personal license. These penalties shall be in addition to penalties that may be imposed  
12 pursuant to Section 4301. If the board finds any dialysis drugs or devices distributed  
13 pursuant to this subdivision to be ineffective or unsafe for the intended use, the board  
14 may institute immediate recall of any or all of the drugs or devices distributed to  
15 individual patients.

16 ...

17 18. Section 4081 of the Code states:

18 (a) All records of manufacture and of sale, acquisition, receipt, shipment, or  
19 disposition of dangerous drugs or dangerous devices shall be at all times during  
20 business hours open to inspection by authorized officers of the law, and shall be  
21 preserved for at least three years from the date of making. A current inventory shall  
22 be kept by every manufacturer, wholesaler, third-party logistics provider, pharmacy,  
23 veterinary food-animal drug retailer, outsourcing facility, physician, dentist,  
24 podiatrist, veterinarian, laboratory, licensed correctional clinic, as defined in Section  
25 4187, clinic, hospital, institution, or establishment holding a currently valid and  
26 unrevoked certificate, license, permit, registration, or exemption under Division 2  
27 (commencing with Section 1200) of the Health and Safety Code or under Part 4  
28 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code  
who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of a pharmacy, wholesaler, third-party logistics  
provider, or veterinary food-animal drug retailer shall be jointly responsible, with the  
pharmacist-in-charge, responsible manager, or designated representative-in-charge,  
for maintaining the records and inventory described in this section.

...

19 19. Section 4105 of the Code states:

20 (a) All records or other documentation of the acquisition and disposition of dangerous  
21 drugs and dangerous devices by any entity licensed by the board shall be retained on  
22 the licensed premises in a readily retrievable form.

23 ...

24 (c) The records required by this section shall be retained on the licensed premises for  
25 a period of three years from the date of making.

26 (d) (1) Any records that are maintained electronically shall be maintained so that the  
27 pharmacist-in-charge, or the pharmacist on duty if the pharmacist-in-charge is not on  
28 duty, shall, at all times during which the licensed premises are open for business, be  
able to produce a hardcopy and electronic copy of all records of acquisition or

disposition or other drug or dispensing-related records maintained electronically.

...

(f) When requested by an authorized officer of the law or by an authorized representative of the board, the owner, corporate officer, or manager of an entity licensed by the board shall provide the board with the requested records within three business days of the time the request was made. The entity may request in writing an extension of this timeframe for a period not to exceed 14 calendar days from the date the records were requested. A request for an extension of time is subject to the approval of the board. An extension shall be deemed approved if the board fails to deny the extension request within two business days of the time the extension request was made directly to the board.

20. Section 4169 of the Code states:

(a) A person or entity shall not do any of the following:

...

(5) Fail to maintain records of the acquisition or disposition of dangerous drugs or dangerous devices for at least three years.

21. Section 4332 of the Code states:

Any person who fails, neglects, or refuses to maintain the records required by Section 4081 or who, when called upon by an authorized officer or a member of the board, fails, neglects, or refuses to produce or provide the records within a reasonable time, or who willfully produces or furnishes records that are false, is guilty of a misdemeanor

22. Section 4333 of the Code states:

(a) All prescriptions filled by a pharmacy and all other records required by Section 4081 shall be maintained on the premises and available for inspection by authorized officers of the law for a period of at least three years. In cases where the pharmacy discontinues business, these records shall be maintained in a board-licensed facility for at least three years.

...

23. Health and Safety Code section 11153 states in pertinent part:

(a) 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.

(b) Any person who knowingly violates this section shall be punished by imprisonment in the state prison or in the county jail not exceeding one year, or by a fine not exceeding twenty thousand dollars (\$20,000), or by both a fine and imprisonment.

(c) No provision of the amendments to this section enacted during the second year of the 1981-82 Regular Session shall be construed as expanding the scope of practice of a pharmacist.

### **STATE REGULATORY AUTHORITY**

24. California Code of Regulations, title 16, section 1761, states:

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

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

### **COSTS**

25. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee 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**

26. Alprazolam, sold under the brand name Xanax, is a Schedule IV controlled substance under Health and Safety Code section 11057 and a dangerous drug under Business and Professions Code Section 4022. Alprazolam is used to treat anxiety disorders and panic disorder. Alprazolam is in a class of medications called benzodiazepines. Alprazolam may heighten the euphoric effect resulting from the use of an oxycodone.

27. Carisoprodol is a muscle relaxant and lists the following drug interaction warning when used with alprazolam and oxycodone: Oxycodone-alprazolam-carisoprodol:

Potentially severe or life-threatening reaction/interaction:

A strong association exists between illicit drug use and the combination of carisoprodol, alprazolam, and a narcotic analgesic. Clinicians should be vigilant for legitimacy of therapeutic use when presented with prescriptions or prescription request for this combination of agents. Institutional guidelines for the handling of drug seeking behavior should be followed."

28. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M) and is a dangerous drug pursuant to Business and Professions Code section 4022. Oxycodone is a narcotic analgesic used for moderate to severe pain and it has a high potential for abuse.

29. Promethazine with codeine syrup is indicated for the temporary relief of coughs and upper respiratory symptoms associated with allergy or the common cold. The National Institute on Drug Abuse (NIDA) identified promethazine with codeine syrup as a drug of abuse with risk of fatal overdose. The street Slang for the drug includes “Syrup,” “Sizzurp” and “Lean.” Promethazine with codeine syrup is labeled with a warning, which is the strictest warning put in the labeling of prescriptions drugs by the FDA.

## FACTS

30. On October 23, 2018, a pharmacy board inspector inspected Respondent Loma Linda Pharmacy. Respondent Hallbauer, Respondent Olson, Respondent Nguyen, Respondent Le, Respondent Tran and Respondent Doan were pharmacists at the pharmacy. Respondent Hallbauer was the pharmacist-in-charge and Respondent Olson was the owner of the pharmacy.

31. Following the inspection, a Board inspector requested an electronic file which contained all prescriptions filled and dispensed from September 28, 2015 through October 23, 2018 from the pharmacy. The pharmacy provided incomplete records on November 1, 2018 and November 15, 2018, which did not include all prescriptions. A demand letter was sent to the pharmacy and Respondent Hallbauer on December 6, 2018. On December 12, 2018 and January 11, 2019, electronic files were provided in a format which could not be accessed by the Board despite requests to provide complete records that could be accessed.

### All Respondents

32. The Board's inspection and subsequent investigation revealed that the pharmacy dispensed 1,895 controlled substance prescriptions from six prescribers, with patterns of irregularities and red flags of abuse, without ensuring the prescriptions were issued for a legitimate medical purpose in the usual course of professional practice. These prescriptions included over 150,000 tablets of Schedule II-IV controlled substances and over 26,000

1 teaspoonful (5 ml) dosages of a Schedule V controlled substance. Respondent Loma Linda  
2 Pharmacy and its pharmacists dispensed controlled substances after ignoring, or were not aware  
3 of, objective factors which showed the prescriptions were irregular and not for medically  
4 legitimate prescriptions. The objective factors of illegitimacy, irregularity, and abuse included,  
5 but were not limited to the following:

6 (a) Percent of cash payment for controlled substance prescriptions from some prescribers  
7 was over twice the normal amounts at Respondent Loma Linda Pharmacy;

8 (b) Promethazine/codeine prescriptions from some prescribers dispensed in amounts and  
9 frequency beyond the normal amounts at Respondent Loma Linda Pharmacy;

10 (c) Uniformity of treatment for multiple patients from the same prescribers, including:

11 (1) large majority of patients were prescribed promethazine/codeine;

12 (2) large majority of patients were prescribed oxycodone 30 mg;

13 (3) large majority of patients were prescribed alprazolam 2 mg.

14 (d) Multiple identical prescriptions dispensed with the same combinations of drugs from  
15 the same prescribers, and on the same days;

16 (e) Multiple patients dispensed combinations of interacting drugs with boxed warnings of  
17 risks, including combinations of oxycodone, hydrocodone, alprazolam, carisoprodol, and  
18 promethazine/ codeine;

19 (f) Multiple drug naive patients started on dosages of oxycodone and alprazolam at over  
20 twice the recommended safe starting dose without upward titration from a lower dose;

21 (g) Patients travelled long distances from several prescribers' offices to Respondent  
22 Loma Linda Pharmacy;

23 (h) Controlled substance prescriptions from prescribers with public records of  
24 accusations without extra scrutiny;

25 (i) No documentation or indications of validation was found to resolve irregularities with  
26 the prescriptions.

27 ///



33. Pharmacy records from 9/28/2015 to 10/23/2018 included prescriptions by Dr. Muhammad Rafi Nasir, Chadwick Smith, Dr. Wendell Street, Dr. John Korzelius, Dr. Gerarrdo General, and PA Susan Wagner. The records revealed that 45.6 percent of the C-V drug prescriptions and 28.1 percent of the C-II drug prescriptions were paid by cash. The records also showed that 87.4 percent of Dr. Nasir's prescriptions, 78.8 percent of Dr. Street's prescriptions and 58.5 % of PA Wagner's prescriptions were paid in cash. In total, the prescriptions dispensed by the pharmacy reflected non-controlled prescriptions were paid with cash less often than controlled substances.

34. Dr. Nasir's area of practice, self-reported, was pain management, and his listed addresses, Altadena and Pasadena, are almost 60 miles from Respondent Loma Linda Pharmacy. For Dr. Nasir, pharmacy records revealed that:

- (a) 52 of the 62 patients were dispensed promethazine/codeine;
- (b) 50 of the 52 promethazine/codeine patients were treated concurrently with an opioid;
- (c) Many of these patients were treated repeatedly with this combination of interacting drugs;
- (d) Many of these prescriptions were for full pint (473 ml) size bottles;
- (e) Over one third (395) of the controlled substance prescriptions were for promethazine/codeine;
- (f) Promethazine/codeine was prescribed at a higher rate during the summer than the winter time;
- (g) Prescriptions contained uniformity regardless of age, weight, renal or hepatic function, diagnosis or other patient related factor;
- (h) Patients were prescribed the highest strength available of oxycodone or alprazolam.

35. Dr. Smith's primary area of practice, self-reported, was orthopedic surgery, and his listed addresses, both in Los Angeles, are over 60 miles and 75 miles from Respondent Loma Linda Pharmacy. For Dr. Smith, pharmacy records revealed that they dispensed controlled substance prescriptions to eleven patients as follows:

- (a) Each of the eleven patients was treated with oxycodone 30 mg;

(b) Every patient was dispensed a controlled substance which had significant drug interactions:

(1) 10 of 11 patients was treated concurrently with promethazine/codeine and oxycodone;

(2) 10 of 11 patients were treated concurrently with alprazolam and oxycodone;

(3) 8 of the 11 patients were treated concurrently with aprazolam and promethazine/codeine.

(c) Some patients received oxycodone 30 mg at dosages which were at least twice the recommended starting dose and alprazolam 2mg at least four times the recommended dose.

36. Dr. Street's primary area of practice, self-reported, was anesthesiology and pain management, and his listed address, Victorville, is over 45 miles from Respondent Loma Linda Pharmacy. On April 13, 2016, Dr. Street surrendered his license to practice medicine related to an accusation filed on December 8, 2014 regarding improper prescribing of controlled substances. For Dr. Street, pharmacy records revealed the following:

(a) Most of the prescriptions were for cash payment;

(b) Every patient was prescribed alprazolam 2 mg;

(c) All the prescriptions were dispensed after a public accusation was filed against him;

(d) There was a pattern of treatment with interacting drugs, such as oxycodone, alprazolam and carisoprodol.

37. Dr. John Korzelius's primary area of practice, self-reported, was general practice, and the addresses listed on his prescriptions, Encino, is 83 miles from Respondent Loma Linda Pharmacy. For Dr. Korzelius, pharmacy records revealed the following:

(a) Every patient was prescribed oxycodone 30 mg;

(b) Every patient received only the highest dose available of oxycodone (30 mg).

38. Dr. General's primary area of practice, self-reported, was internal medicine, and his listed address, Chino, is over 30 miles from Respondent Loma Linda Pharmacy. For Dr. General, pharmacy records revealed the following:

(a) 89.9 % of the controlled substance prescriptions were for oxycodone 30 mg;

1 (b) There was uniformity in treatment for all patients;

2 (c) Some patients received oxycodone 30 mg in dosages which were at least twice the  
3 recommended starting dose.

4 39. On August 30, 2016, an accusation was filed against PA Wagner regarding improper  
5 prescribing of controlled substances, and she was placed on probation. Her listed address,  
6 Riverside, is 10 miles from Respondent Loma Linda Pharmacy. For PA Wagner, pharmacy  
7 records revealed the following:

8 (a) 54 of the 65 patients were dispensed oxycodone;

9 (b) All but one alprazolam prescription was for 2 mg, the highest dose available;

10 (c) Many of the patients were treated repeatedly with a combination of interacting drugs;

11 (d) Multiple patients received the same treatment of drugs on the same date, including the  
12 combination of oxycodone, alprazolam and carisoprodol;

13 (e) Some patients received oxycodone 30 mg in dosages which were at least twice the  
14 recommended starting dose.

15 40. Respondent Hallbauer failed to use available records and information, and his  
16 education, training, and experience, and best professional judgment, in the evaluation of  
17 controlled substance dispensing decisions when he personally approved to be dispensed  
18 prescriptions which had the following irregularities and red flags of illegitimacy:

19 (a) 35 controlled substance prescriptions to 7 patients from 09/28/2015 - 04/06/2016;

20 (b) 11 instances of interacting drugs dispensed together, including oxycodone with  
21 alprazolam, and/or a combination of these drugs with carisoprodol.

22 **Respondent Nguyen**

23 41. Respondent Nguyen failed to use available records and information, and her  
24 education, training, and experience, and best professional judgment, in the evaluation of  
25 controlled substance dispensing decisions when she approved the following prescriptions without  
26 resolution of red flags of abuse and illegitimacy:

27 (a) 164 controlled substance prescriptions dispensed to 34 patients from 11/22/2017 -  
28 09/28/2018, including dispensing promethazine/codeine to 33 of the 34 patients and

1 promethazine/codeine dispensed with an opioid or alprazolam with serious drug interactions in 55  
2 instances;

3 (b) 87 controlled substance prescriptions dispensed to 9 patients from 07/27/2017 -  
4 10/03/2018: All patients prescribed oxycodone 30 mg and alprazolam 2 mg and 27 instances of  
5 these interacting drugs dispensed together;

6 (c) Dispensed prescription numbers 119949, 119952, and 119956 for oxycodone 30 mg  
7 on the same day to three patients with the same address and apartment number, and from a  
8 prescriber over 80 miles away; and

9 (d) Prescriptions numbers 104383, 104382, 114561, 114560, 114557, 114556, 117992,  
10 122662, and 122661 were dispensed with starting dosages two or more times the safe  
11 recommended dosages.

12 **Respondent Le**

13 42. Respondent Le failed to use available records and information, and her education,  
14 training, and experience, and best professional judgment, in the evaluation of controlled substance  
15 dispensing decisions when she approved the following prescriptions without resolution of red  
16 flags of abuse and illegitimacy:

17 (a) 83 controlled substance prescriptions dispensed to 28 patients from 12/05/2017 -  
18 10/17/2018:

19 (1) 19 of the 28 patients dispensed promethazine/codeine;

20 (2) 23 instances where promethazine/codeine was dispensed with an opioid or  
21 alprazolam with serious drug interactions;

22 (b) 41 controlled substance prescriptions dispensed to 9 patients from 04/14/2016 -  
23 10/02/2018: 9 instances where opioids, alprazolam, and/or promethazine/codeine was dispensed  
24 together with serious drug interactions;

25 (c) 57 controlled substance prescriptions dispensed to 7 patients from 10/15/2015 -  
26 04/10/2016: 18 instances where opioids and alprazolam were dispensed together with serious  
27 drug interactions;

(e) Prescriptions Nos. 115189, 115188 and 118536 were dispensed with starting dosages two or more times the safe recommended dosages.

**Respondent Tran**

43. Respondent Tran failed to use available records and information, and her education, training, and experience, and best professional judgment, in the evaluation of controlled substance dispensing decisions when she approved the following prescriptions without resolution of red flags of abuse and illegitimacy:

(a) 183 controlled substance prescriptions dispensed to 38 patients from 11/20/2017 - 10/18/2018:

(1) 30 of the 38 patients dispensed promethazine/codeine;

(2) 57 instances where promethazine/codeine was dispensed with an opioid or alprazolam with serious drug interactions;

(b) 34 controlled substance prescriptions dispensed to 8 patients from 12/04/2017 - 10/18/2018:

(1) 7 of the 8 patients were dispensed oxycodone 30 mg;

(2) Opioids, alprazolam, and/or promethazine/codeine were dispensed in eleven (11) instances together with serious drug interactions.

**Respondent Doan**

44. Respondent Doan failed to use available records and information, and her education, training, and experience, and best professional judgment, in the evaluation of controlled substance dispensing decisions when she approved the following prescriptions without resolution of red flags of abuse and illegitimacy:

(a) 36 controlled substance prescriptions were dispensed to 14 patients from 01/23/2018 - 10/23/2018:

(1) 10 of the 14 patients were dispensed promethazine/codeine;

(2) Opioids, alprazolam, and/or promethazine/codeine were dispensed together with serious drug interactions in thirteen (13) instances.

(b) The following prescriptions were dispensed on the same day from Dr. Smith whose office was over 60 miles from the pharmacy:

Date	Number	Patient	Drug	Qty.
12/19/2017	108097	Michael B.	alprazolam 2 mg	120
12/19/2017	108135	Michael B.	oxycodone 30 mg	120
12/19/2017	108098	Michael B.	promethazine/codeine	473
12/19/2017	108075	Tamie S.	oxycodone 30 mg	120
12/19/2017	108099	Venice F.	alprazolam 2 mg	120
12/19/2017	108136	Venice F.	oxycodone 30 mg	120
12/19/2017	108100	Venice F.	promethazine/codeine	473

**FIRST CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct: Failure to Exercise Corresponding Responsibility)  
(Against Respondent Loma Linda Pharmacy, Respondent Hallbauer, Respondent Nguyen,  
Respondent Le, Respondent Tran, and Respondent Doan)**

45. Respondent Loma Linda Pharmacy, Respondent Hallbauer, Respondent Nguyen, Respondent Le, Respondent Tran, and Respondent Doan are each and severally subject to disciplinary action under section 4301, subdivisions (c), (d) and (j), and section 4306.5 of the Code, Health and Safety code section 11153, subdivision (a), and California Code of Regulations, title 16, section 1761, subdivisions (a) and (b), in that Respondents operated in a grossly negligent manner, which constituted unprofessional conduct, by excessively furnishing controlled substances, with an established history of a high potential for abuse, despite multiple cues of irregularity and uncertainty related to patient and prescriber factors, and in failing to comply with their corresponding responsibility to ensure that controlled substances are dispensed for a legitimate medical purpose. Complainant refers to, and by this reference, incorporates the allegations set forth above in paragraphs 30, and 32-44, as though set forth fully.

///

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Prescription Records)**

3 **(Against Respondent Loma Linda Pharmacy, Respondent Hallbauer, Respondent Olson)**

4 46. Respondent Loma Linda Pharmacy, Respondent Hallbauer, and Respondent Olson  
5 are each and severally subject to disciplinary action under sections 4332, 4081, subdivisions (a)  
6 and (b), 4105, subdivisions (a), (d)(1) and (f), and 4169, subdivision (a)(5), in that Respondents  
7 failed to maintain prescription records in a manner wherein they were able to produce a hardcopy  
8 and electronic copy of all records of acquisition and disposition or other drug or dispensing-  
9 related records. Respondents also failed to provide complete records when requested by the  
10 Board. Complainant refers to, and by this reference, incorporates the allegations set forth above  
11 in paragraphs 30-31, as though set forth fully.

12 **OTHER MATTERS**

13 47. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number  
14 PHY 44306 issued to Loma Linda Pharmacy Inc. dba Loma Linda Pharmacy Inc. while Douglas  
15 Grover Olson has been an owner and had knowledge of or knowingly participated in any conduct  
16 for which the licensee was disciplined, Douglas Grover Olson shall be prohibited from serving as  
17 a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for  
18 five years if Pharmacy Permit Number PHY 44306 is placed on probation or until Pharmacy  
19 Permit Number PHY 44306 is reinstated if it is revoked.

20 48. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number  
21 PHY 44306 issued to Loma Linda Pharmacy Inc. dba Loma Linda Pharmacy Inc. while Kenneth  
22 Ray Hallbauer has been a pharmacist-in-charge and had knowledge of or knowingly participated  
23 in any conduct for which the licensee was disciplined, Kenneth Ray Hallbauer shall be prohibited  
24 from serving as a manager, administrator, owner, member, officer, director, associate, or partner  
25 of a licensee for five years if Pharmacy Permit Number PHY 44306 is placed on probation or  
26 until Pharmacy Permit Number PHY 44306 is reinstated if it is revoked.

27 ///

28 ///

1 **DISCIPLINE CONSIDERATIONS**

2 49. To determine the degree of discipline, if any, to be imposed on Respondent Loma  
3 Linda Pharmacy, Respondent Olson and Respondent Hallbauer, Complainant alleges that a  
4 Stipulated Settlement and Disciplinary Order for Public Reapproval was entered on or about March  
5 4, 2019, in a prior action entitled *In the Matter of the Accusation Against Loma Linda Pharmacy*  
6 *Inc., Douglas G. Olson, President, and Kenneth Ray Hallbauer*, OAH Case No. 20198090285,  
7 Board of Pharmacy Case No. 5296. A copy of the decision is attached as Exhibit A.

8 50. To determine the degree of discipline, if any, to be imposed on Respondent Loma  
9 Linda Pharmacy, and Respondent Olson, Complainant alleges that a Stipulated Settlement and  
10 Disciplinary Order was entered on or about December 13, 1994, in a prior action titled *In the*  
11 *Matter of the Accusation Against Loma Linda Pharmacy and Douglas G. Olson, President*, Board  
12 of Pharmacy Case No. 1708. A copy of the decision is attached as Exhibit B.

13 51. To determine the degree of discipline, if any, to be imposed on Respondent Nguyen,  
14 Complainant alleges that a Stipulated Settlement and Disciplinary Order was entered on or about  
15 August 19, 2011, in a prior action titled *In the Matter of the Accusation Against Top Care*  
16 *Pharmacy, Nga Nguyen, President and Pharmacist-in-Charge and Na Tan Nguyen*, Board of  
17 Pharmacy Case No. 3335. A copy of the decision is attached as Exhibit C.

18 **PRAYER**

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

21 1. Revoking or suspending Pharmacy Permit Number PHY 44306 issued to Loma Linda  
22 Pharmacy Inc. dba Loma Linda Pharmacy Inc.;

23 2. Revoking or suspending Pharmacist License Number 44410, issued to Kenneth Ray  
24 Hallbauer;

25 3. Revoking or suspending Pharmacist License Number 26777, issued to Douglas  
26 Grover Olson;

27 4. Revoking or suspending Pharmacist License Number 43814, issued to Nga Tan  
28 Nguyen;



- 1           5.     Revoking or suspending Pharmacist License Number 43488 issued to Son Trung  
2 Tran;
- 3           6.     Revoking or suspending Pharmacist License Number 50033, issued to Thien-Ly C.  
4 Doan;
- 5           7.     Prohibiting Loma Linda Pharmacy Inc. dba Loma Linda Pharmacy Inc. (PHY 44306)  
6 from serving as a manager, administrator, owner, member, officer, director, associate, or partner  
7 of a licensee for five years if Pharmacy Permit Number PHY 44306 is placed on probation or  
8 until Pharmacy Permit Number PHY 44306 is reinstated if Pharmacy Permit Number 44306  
9 issued to Loma Linda Pharmacy Inc. dba Loma Linda Pharmacy Inc. is revoked;
- 10          8.     Prohibiting Kenneth Ray Hallbauer from serving as a manager, administrator, owner,  
11 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit  
12 Number PHY 44306 is placed on probation or until Pharmacy Permit Number PHY 44306 is  
13 reinstated if Pharmacy Permit Number 44306 issued to Loma Linda Pharmacy Inc. dba Loma  
14 Linda Pharmacy Inc. is revoked;
- 15          9.     Prohibiting Douglas Grover Olson from serving as a manager, administrator, owner,  
16 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit  
17 Number PHY 44306 is placed on probation or until Pharmacy Permit Number PHY 44306 is  
18 reinstated if Pharmacy Permit Number 44306 issued to Loma Linda Pharmacy Inc. dba Loma  
19 Linda Pharmacy Inc. is revoked;
- 20          10.    Ordering Loma Linda Pharmacy Inc. dba Loma Linda Pharmacy Inc., Kenneth Ray  
21 Hallbauer, Douglas Grover Olson, Nga Tan Nguyen, Yvonne Hong Le, Son Trung Tran, Thien-  
22 Ly C. Doan to pay the Board of Pharmacy the reasonable costs of the investigation and  
23 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: August 20, 2019



ANN SODERGREN  
Interim Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

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## EXHIBIT A

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

In the Matter of the Accusation Against:

**LOMA LINDA PHARMACY INC.,  
DOUGLAS G. OLSON, PRESIDENT**  
25620 Barton Road  
Loma Linda, CA 92354  
**Pharmacy Permit No. PHY 44306**

and

**KENNETH RAY HALLBAUER**  
26349 Snowden Ave.  
Redlands, CA 92374  
**Pharmacist License No. RPH 44410**

Respondents.

Case No. 5296

OAH No. 2018090285

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER FOR PUBLIC  
REPROVAL**

**[Bus. & Prof. Code § 495]**

The attached Stipulated Settlement and Disciplinary Order for Public Reproval 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 April 3, 2019.

It is so ORDERED on March 4, 2019.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read 'Victor Law', is written over a horizontal line.

By

Victor Law, R.Ph.  
Board President

1 XAVIER BECERRA  
Attorney General of California  
2 SHAWN P. COOK  
Supervising Deputy Attorney General  
3 State Bar No. 117851  
300 So. Spring Street, Suite 1702  
4 Los Angeles, CA 90013  
Telephone: (213) 269-6291  
5 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
6

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

11 In the Matter of the Accusation Against:

12 **LOMA LINDA PHARMACY INC.,**  
13 **DOUGLAS G. OLSON, PRESIDENT**  
14 **25620 Barton Road**  
15 **Loma Linda, CA 92354**  
16 **Pharmacy Permit No. PHY 44306,**

17 **and**

18 **KENNETH RAY HALLBAUER**  
19 **26349 Snowden Ave.**  
20 **Redlands, CA 92374**  
21 **Pharmacist License No. RPH 44410**

22 Respondents.

Case No. 5296

OAH No. 2018090285  
**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER FOR  
PHARMACY PERMIT AND  
PHARMACIST LICENSE**

**[Bus. & Prof. Code § 495]**

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

25 **PARTIES**

26 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy  
27 (Board). She brought this action solely in her official capacity and is represented in this matter by  
28 Xavier Becerra, Attorney General of the State of California, by Shawn P. Cook, Supervising  
Deputy Attorney General.

2. Respondent Loma Linda Pharmacy Inc., Douglas G. Olson, President (Respondent Pharmacy) and Respondent Kenneth Ray Hallbauer (Respondent Pharmacist), collectively “Respondents” are represented in this proceeding by attorney Adam B. Brown, Esq., Law Offices of Brown & Brown; 3848 W. Carson Street, Ste. 206; Torrance, CA 90503.

## JURISDICTION

3. On or about September 17, 1999, the Board issued Pharmacy Permit No. PHY 44306 to Loma Linda Pharmacy Inc., Douglas G. Olson, President. The Pharmacy Permit was in full force and effect at all times relevant to the charges brought in Accusation No. 5296 and will expire on September 1, 2019, unless renewed.

4. On or about August 8, 1991, the Board of Pharmacy issued Pharmacist License Number RPH 44410 to Kenneth Ray Hallbauer. The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2019, unless renewed.

5. Accusation No. 5296 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs and is currently pending against Respondents. The Accusation and all other statutorily required documents were properly served on Respondents on May 10, 2018. Respondents timely filed their Notice of Defense contesting the Accusation. A copy of Accusation No. 5296 is attached as exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

6. Respondents have carefully read, fully discussed with counsel, and understand the charges and allegations in Accusation No. 5296. Respondents have also carefully read, fully discussed with counsel, and understand the effects of this Stipulated Settlement and Disciplinary Order for Public Reproval.

7: Respondents are fully aware of their legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at their own expense; the right to confront and cross-examine the witnesses against them; the right to present evidence and to testify on their own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration

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

3 8. Respondents voluntarily, knowingly, and intelligently waive and give up each and  
4 every right set forth above.

5 CULPABILITY

6 9. Respondents admit the truth of each and every charge and allegation in Accusation  
7 No. 5296.

8 10. Respondents agree that their Pharmacy Permit and Pharmacist License are each and  
9 both subject to discipline and they agree to be bound by the Disciplinary Order below.

10 RESERVATION

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

14 CONTINGENCY

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

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

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

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

## DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 44306 issued to Respondent Pharmacy Loma Linda Pharmacy Inc., Douglas G. Olson, President and Pharmacist License Number RPH 44410 issued to Respondent Pharmacist Kenneth Ray Hallbauer, shall be publicly reprovod by the Board of Pharmacy under Business and Professions Code section 495 in resolution of Accusation No. 5296, attached as exhibit A.

**Cost Recovery.** Respondents shall pay \$11,100.00 to the Board for its costs associated with the investigation and enforcement of this matter. Respondents shall be permitted to pay these costs by twelve (12) equal monthly payments of \$925, or may make accelerated payments, with full payment due no later than twelve (12) months after the effective date of this Decision and Order.

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1 ACCEPTANCE


2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
3 discussed it with my attorney, Adam Brown, Esq. I understand the stipulation and the effect it  
4 will have on my Pharmacy Permit. I enter into this Stipulated Settlement and Disciplinary Order  
5 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the  
6 Board of Pharmacy.

7  
8 DATED: 12-19-18

  
9 LOMA LINDA PHARMACY INC., by DOUGLAS G  
10 OLSON, PRESIDENT  
Respondent

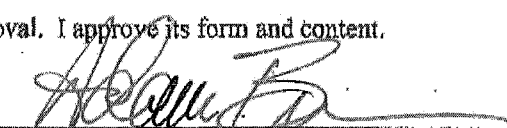
11 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
12 discussed it with my attorney, Adam Brown, Esq. I understand the stipulation and the effect it  
13 will have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary  
14 Order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

16  
17 DATED: 12/19/18

  
18 KENNETH RAY HALLBAUER  
19 Respondent

20 I have read and fully discussed with Respondent Loma Linda Pharmacy Inc., Kenneth Ray  
21 Hallbauer the terms and conditions and other matters contained in the above Stipulated Settlement  
22 and Disciplinary Order for Public Reproval. I approve its form and content.

23 DATED: 12-19-18

  
24 ADAM B. BROWN, ESQ.  
25 Attorney for Respondent  
26  
27  
28

ENDORSEMENT

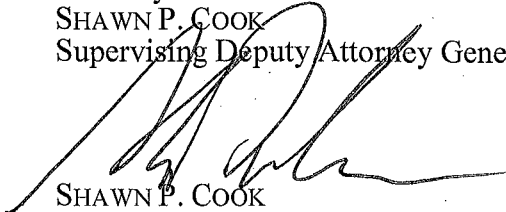
The foregoing Stipulated Settlement and Disciplinary Order for Public Reapproval is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated:

12/19/18

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
SHAWN P. COOK  
Supervising Deputy Attorney General

  
SHAWN P. COOK  
Supervising Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 5296**

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 LESLIE A. WALDEN  
Deputy Attorney General  
4 State Bar No. 196882  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-3465  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 5296

11 **LOMA LINDA PHARMACY INC.,**  
12 **DOUGLAS G. OLSON, PRESIDENT**  
25620 Barton Road  
13 Loma Linda, CA 92354

**A C C U S A T I O N**

14 **Pharmacy Permit No. PHY 44306,**

15 **and**

16 **KENNETH RAY HALLBAUER**  
26349 Snowden Ave.  
17 Redlands, CA 92374

18 **Pharmacist License No. RPH 44410**

19 Respondent.

20  
21  
22 Complainant alleges:

23 **PARTIES**

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

26 2. On or about September 17, 1999, the Board of Pharmacy issued Pharmacy Permit  
27 Number PHY 44306 to Loma Linda Pharmacy Inc., Douglas G. Olson, President (Respondent).  
28 The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein

1 and will expire on September 1, 2018, unless renewed. Kenneth Ray Hallbauer has been the  
2 pharmacist-in-charge since December 31, 2009

3 3. On or about August 8, 1991, the Board of Pharmacy issued Pharmacist License  
4 Number RPH 44410 to Kenneth Ray Hallbauer (Respondent). The Pharmacist License was in full  
5 force and effect at all times relevant to the charges brought herein and will expire on October 31,  
6 2018, 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 4300 of the Code states:

12 "(a) Every license issued may be suspended or revoked.

13 6. Section 4300.1 of the Code states:

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

19 7. Section 4301 of the Code states:

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

23 "...

24 "(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a)  
25 of Section 11153 of the Health and Safety Code.

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

1       "(g) Knowingly making or signing any certificate or other document that falsely represents  
2 the existence or nonexistence of a state of facts.

3       "..."

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

6       "..."

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

11       "(p) Actions or conduct that would have warranted denial of a license.

12       "..."

13       8.     Section 4022 of the Code states

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

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

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

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

### 23                               REGULATIONS

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

25       "For the purpose of denial, suspension, or revocation of a personal or facility license  
26 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
27 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
28 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."

10. California Code of Regulations, title 16, section 1761 states:

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

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

#### **HEALTH AND SAFETY CODE**

11. Health and Safety Code section 11153 states:

"(a) 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."

"(b) Any person who knowingly violates this section shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail not exceeding one year, or by a fine not exceeding twenty thousand dollars (\$20,000), or by both that fine and imprisonment."

"(c) No provision of the amendments to this section enacted during the second year of the 1981-82 Regular Session shall be construed as expanding the scope of practice of a pharmacist."

12. Health and Safety Code section 11173 states:

“(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.”

“(b) No person shall make a false statement in any prescription, order, report, or record, required by this division.”

“(c) No person shall, for the purpose of obtaining controlled substances, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, registered nurse, physician's assistant, or other authorized person.”

“(d) No person shall affix any false or forged label to a package or receptacle containing controlled substances.”

#### **COST RECOVERY**

13. Section 125.3 of the Code states, in pertinent part, 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.

#### **DRUG CLASSIFICATIONS**

14. “Roxicodone” is the brand name for oxycodone 30, which is classified as a dangerous drug pursuant to Business and Professions Code section 4022, and is a schedule II controlled substance pursuant to Health and Safety Code section 11055 subdivision (b)(1)(M). It is used to treat severe pain.

15. “Vicodin” is the brand name for Hydrocodone/A pap 5/300, which is classified as a dangerous drug pursuant to Business and Professions Code section 4022, and is a schedule III controlled substance pursuant to Health and Safety Code section 11056 subdivision (e)(4). It is used to treat moderate to severe pain.

16. “Methadone” is classified as a dangerous drug pursuant to Business and Professions Code section 4022, and is a schedule II controlled substance pursuant to Health and Safety Code section 11055 subdivision (c)(14). It is used to treat moderate to severe pain.



17. "Phenergan with Cod" is the brand name for Promethazine with codeine, which is classified as a dangerous drug pursuant to Business and Professions Code section 4022, and is a schedule V controlled substance pursuant to Health and Safety Code section 11058 subdivision (c)(1). It is used to treat coughing.

18. "Carisoprodol" is the brand name for Soma, classified as a Schedule IV controlled substance, muscle relaxant, effective as of December 2011, pursuant to Federal law, Title 21 Code of Federal Regulations 1308.14(c)(5).

19. "Opana" is the generic form of oxycodone, classified as a Schedule II controlled substance, pursuant to Federal law, Title 21 Code of Federal Regulations 1308.12(b)(1)(vii) and California law, Health and Safety Code section 11055 (b)(1)(J) and is used to treat moderate to severe pain.

## DEFINITIONS

20. "Doctor Shopping" is using multiple providers and pharmacies to get multiple prescriptions for controlled substances without providers and pharmacies knowing about the other prescriptions. The practice is also referred to as "prescription fraud" or RX fraud. California's primary anti-doctor shopping law is Health and Safety Code section 11173 subdivision (a) which prohibits a person from obtaining a prescription by fraud or concealing a material fact. In addition, a pharmacy that does not perform its due diligence in filling these prescriptions is in violation Business and Professions Code section 4301, subdivision (d).

21. "Controlled Substance Utilization Review and Evaluation System (CURES)" is a system used to assist health care practitioners in their efforts to ensure appropriate prescribing, ordering, administering, furnishing and dispensing of controlled substances. All pharmacies and practitioners who dispense controlled substances are required to transmit each prescription for a Schedule II, III or IV controlled substance to the CURES system as soon as possibly reasonable, but no more than seven days after the date dispensed. The data transmitted is available to pharmacists and practitioners who are registered through the Prescription Drug Monitoring Program.

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Filling Erroneous/Uncertain Prescriptions and Failure to Verify Prescriptions)

3 22. Respondents Loma Linda Pharmacy and Kenneth Ray Hallbauer are subject to  
4 disciplinary action under section 4300 in conjunction with title 16 of the California Code of  
5 Regulations, section 1761, subdivision (a) and Health and Safety Code section 11153, subdivision  
6 (a) in that Respondents, while operating at 25620 Barton Road, Loma Linda, California 92354,  
7 filled numerous prescriptions for habitual doctor shoppers, where said prescriptions were  
8 erroneous and/or uncertain and Respondents failed to assume co-responsibility in ascertaining the  
9 legitimacy and validity of the prescriptions.

10 23. The circumstances underlying these allegations are as follows:

11 a. Respondents failed to obtain a PARs, which would have alerted them of doctor  
12 shopping by R.A.<sup>1</sup>, where R.A. had 29 prescriptions filled for hydrocodone/apap 5/500 by seven  
13 (7) doctors at Respondents Pharmacy from on or about July 15, 2009 to May 9, 2013.

14 b. Respondents failed to obtain a PARs, which would have alerted them of doctor  
15 shopping by G.A., who went to three (3) doctors and nine pharmacies for controlled substances  
16 from on or about October 25, 2011 to April 16, 2013 and filled approximately 42 of G.A.'s  
17 prescriptions.

18 c. Respondents failed to obtain a PARs, which would have alerted them of doctor  
19 shopping by K.B., who had five (5) prescriptions filled by Respondents between July 21, 2011 to  
20 December 22, 2011 for oxycodone from four (4) different doctors.

21 d. Respondents failed to obtain a PARs, which would have alerted them of doctor  
22 shopping by M.B, who went to 14 pharmacies and 11 doctors during the period Respondents were  
23 filling his prescriptions from July 20, 2011 to April 10, 2013. Specifically, on July 1, 2011", M.B.  
24 had prescription 2033125 for 240 oxycodone 30mg, 30 day supply (DS) from Cole's Care  
25 Pharmacy (PHY35297) in Fontana. On July 20, 2011, Respondents filled Rx # 956131 for 240  
26 oxycodone 30mg, 11 days early. On August 16, 2011 M.B. had Rx # 523886 filled for 240

27 <sup>1</sup> Witness initials are used throughout this Accusation in lieu of full names in order to  
28 protect the privacy rights of these individuals.

1 oxycodone 30mg (30 DS) filled at Queen's Pharmacy (PHY 45533) in Victorville. On August 17,  
2 2011, Respondents filled Rx # 958302 for 240 oxycodone 30mg, 29 days early.

3 e. Respondents failed to obtain a PARs, which would have alerted them of doctor  
4 shopping by M.B#2, who had prescriptions filled for hydrocodone/acetaminophen 5/325 mg, 5/500  
5 mg, oxycodone 30 mg, alprazolam 2mg, Norco 5/325 mg, and acetaminophen with codeine  
6 300/30 mg at seven (7) pharmacies from nine (9) doctors from December 3, 2009 to September 7,  
7 2011, as Rx nos.# 568226, 468108, 713818, 398079, 718548, 718547, 1111, 421802, 674140,  
8 and 429681. Respondents filled prescriptions for oxycodone prescribed by three (3) different  
9 doctors during a 6 month period from June 1, 2011 to November 4, 2011 as Rx nos. 949442,  
10 952094, 954608, 954607, 957118, and 965331.

11 f. Respondents failed to obtain PARs on P.B., which would have alerted them that  
12 P.B. had gone to 27 doctors and five (5) pharmacies for controlled substances from 2009 to 2013  
13 resulting in early fills during all 4 years. Respondent failed to review their own patient profile  
14 where they would have noticed the early refills on March 23, 2010 and February 20, 2013. In  
15 addition, on March 5, 2009, P.B. had Rx # 451102 filled for 140 methadone 10mg tablets (35DS)  
16 by PA Lanier. On March 23, 2009, Respondents filled Rx # 883370 for 300 methadone 10mg, 17  
17 days early by Dr. C.. On May 8, 2009, P.B. had Rx # 458649 filled for 140 methadone 10mg  
18 (35DS) by Dr. K. at another pharmacy. On May 18, 2009, Respondents filled Rx # 888620 for  
19 P.B. for 300 methadone 10mg by Dr. R., 24 days early. On June 4, 2009, P.B. had Rx # 461793  
20 filled for 140 methadone 10mg (35DS) by Dr. K. On June 16, 2009, Respondents filled Rx #  
21 891383 for 300 methadone 10mg by Dr. C., 23 days early. On March 18, 2010, Respondents filled  
22 Rx # 915903 for 150 methadone 10mg (15DS) by Dr. H. On March 23, 2010, Respondents filled  
23 Rx # 916226 for 300 methadone 10mg (30 DS) by Dr. N., 10 days early. On April 8, 2010, P.B.  
24 had Rx # 498581 for 150 methadone 10mg (30DS) filled by Dr. K. "at CVS 9803 (PHY47778)  
25 located at 491 E. Alesandro Blvd in Riverside. On April 20, 2010, Respondent filled Rx # 918732  
26 for 300 methadone 10mg by Dr. K. 18 days early. On February 1, 2013, P.B. had Rx # 998535  
27 filled for 180 methadone 10mg (30DS) by Respondents. On February 20, 2013, Respondents  
28 filled Rx # 999908 for 180 methadone 10mg, 11 days early.

1           g.     Respondents failed to obtain a PARs which would have alerted them of L.B.'s  
2 doctor shopping. L.B. went to 32 pharmacies and 44 doctors for controlled substances such as  
3 Hydrocodone products, Diazepam, Oxycontin, Dilaudid, Carisoprod, Opana ER, Promethazine  
4 with Codeine, and Alprazolam from approximately January 2009 through March 2013.

5           h.     Respondents failed to obtain a PARs which would have alerted them of K.B.'s  
6 doctor shopping. K.B. went to seven (7) pharmacies in Woodland Hills, Victorville, San  
7 Bernardino, Colton and Rialto as well as eight (8) doctors from San Bernardino, Los Angeles,  
8 Panorama City, Corona, Inglewood and Northridge from approximately December 22, 2010 to  
9 July 2, 2012 obtaining controlled substances such as hydrocodone/acetaminophen 10/325mg,  
10 oxycodone 30mg, alprazolam 2mg, Diazepam 10mg, and acetaminophen with codeine 300/30mg.

11          i.     Respondents failed to obtained PARs reports on C.D., which would have alerted  
12 them that C.D. had gone to 19 doctors and 25 pharmacies in Rialto, Victorville, Rancho  
13 Cucamonga, Fontana, Apple Valley, Moreno Valley to Perris for controlled substances during the  
14 period they were filling prescriptions for the patient. Specifically, on November 19, 2011, C. D.  
15 had Rx 14173 for 240 oxycodone 30mg (30DS) written by Dr. D. and filled at Curts Pharmacy in  
16 Victorville. On November 29, 2011 Respondents filled Rx # 967439 for 240 oxycodone 30mg (30  
17 DS), for C.D. written by PA.W., 20 days early. On December 16, 2011, C.D. had Rx # 97008  
18 filled for 240 oxycodone 30mg (30DS) at a pharmacy in Fontana. On December 23, 2011, C.D.  
19 had Rx # 970048 filled for 240 oxycodone 30mg (30DS) by Respondents, 23 days early. On  
20 January 18, 2012, C.D. had Rx # 1023076 for 90 hydrocodone /apap 325/10mg (30 DS) written  
21 by Dr. S. and filled at a pharmacy in Rancho Cucamonga. Respondents then filled Rx # 972853  
22 for 120 hydrocodone/apap 10/325 (30 DS) written by PA.W. on January 24, 2012, 24 days early  
23 for C.D. On January 13, 2012, C.D. had Rx # 2033733 for 240 oxycodone 30mg (30DS) written  
24 by Dr. D. filled at Cole's Care Pharmacy. On January 26, 2012, Respondents filled Rx # 973136  
25 for 240 oxycodone 30mg (30DS) written by PA W., 17 days early for C.D. On July 28, 2012,  
26 C.D. had Rx # 142795 filled for 90 oxycodone 30mg (30 DS) written by Dr. C. at a pharmacy in  
27 Rialto. On August 1, 2012 Respondents filled Rx # 985894 for 150 oxycodone 30mg for C.D.  
28 written by Dr. H., 27 days early. On September 8, 2012, C.D. had Rx # 171932 filled for 135

1 oxycodone 30mg (34DS) written by Dr. H. at a pharmacy in Apple Valley. On September 21,  
2 2012, Respondents filled Rx # 989409 for 90 oxycodone 30mg (30DS) written by Dr. C., 21 days  
3 early. On October 5, 2012, C.D. had Rx # 174554 filled for 50 methadone 10mg (25 DS) written  
4 by Dr. H. at a pharmacy in Apple Valley. Respondents filled Rx # 990325 for 50 methadone 10mg  
5 on October 5, 2012, 25 days early for C.D. On October 23, 2012, C.D. had Rx # 707271 filled for  
6 90 oxycodone 30mg (30 DS) written by Dr. C. at a pharmacy in San Bernardino. Respondents  
7 filled Rx # 992403 for 120 oxycodone 30mg written by Dr. H., 18 days early. On November 28,  
8 2012, C.D. had Rx # 711058 filled for 90 oxycodone 30mg (30DS) written by Dr. M. at a  
9 pharmacy in San Bernardino. Respondents filled Rx # 99433 for 120 oxycodone 30mg written by  
10 Dr. H. on December 4, 2012, 23 days early.

11 j. Respondents failed to obtain PARs, which would have alerted them that A.D.  
12 went to 12 pharmacies in San Bernardino and Valencia, and 11 doctors in San Bernardino and  
13 Panorama City for controlled substances. Specifically, A.D., residing in San Bernardino, had Rx #  
14 2033075 filled at a pharmacy in Fontana for 240 oxycodone 30mg (30DS) on June 20, 2011 by  
15 Dr. L. in Northridge. On June 21, 2011, Respondents filled Rx # 953521 for 240 oxycodone  
16 30mg (30DS) by Dr. O. 29 days early. On October 10, 2011, A.D. had Rx # 389868 filled at a  
17 pharmacy in Palm Springs for 90 oxycodone 30mg (30DS) by Dr. M. S. who worked in Panorama  
18 City. On October 21, 2011, Respondents filled Rx # 964003 for 120 oxycodone 30mg (30DS) 19  
19 days early.

20 k. Respondents failed to obtain PARs, which would have alerted them that K.D.  
21 went to nine (9) pharmacies and 20 prescribers in Los Angeles, Artesia, Redlands, San Bernardino,  
22 Culver City, Colton, Highland, Chino, Pasadena, Hemet, Panorama City, Monterey Park, La  
23 Puente and Riverside from approximately July, 2009 through January, 2013 obtaining Oxycontin  
24 40mg and 80mg, hydrocodone/acetaminophen 10/325mg, alprazolam 2mg, oxycodone 30mg and  
25 80mg, promethazine with codeine liquid, fentanyl transdermal system 50mcg/hr, carisoprodol  
26 350mg.

27 l. Respondents failed to obtain PARs, which would have alerted them that K.D.#2  
28 was doctor shopping. K.D.#2 went to six (6) pharmacies in Long Beach and Redlands, and

1 Respondents went to six (6) doctors in Palos Verdes Estates, San Pedro and Riverside from  
2 approximately April 15, 2011 to January 17, 2012 obtaining Hydrocodone/acetaminophen  
3 7.5/750mg and 10/325mg, oxycodone 30mg, and alprazolam 2mg.

4 m. Respondents failed to obtain a PARs, which would have alerted them of doctor  
5 shopping by V.E., where V.E. went to 12 pharmacies and 12 doctors in Los Angeles and San  
6 Bernardino during the period Respondents were filling prescriptions for this patient. Specifically,  
7 on February 1, 2011, V. E. had Rx # 2032577 for 240 oxycodone 30mg (30 DS) by Dr. P. at a  
8 pharmacy in Fontana. On February 8, 2011, Respondents filled Rx # 942309 for 240 oxycodone  
9 30mg by PA S. W., 23 days early. On March 7, 2011, V.E. had Rx # 2032676 filled for 240  
10 oxycodone 30mg (30DS) by Dr. P. at Cole's Care Pharmacy in Fontana. On March 8, 2011,  
11 Respondents filled Rx # 944786 for 240 oxycodone 30mg by PA W., 29 days early. On April 4,  
12 2011, V.E. had Rx # 2032778 filled for 240 oxycodone 30mg (30 DS) by Dr. P. at Cole's Care  
13 Pharmacy in Fontana. On 4/5/2011, Respondents filled Rx # 947185 for 240 oxycodone 30mg by  
14 PA W., 29 days early. On July 5, 2011, V. E. had Rx # 1257474 filled for 180 oxycodone 30mg  
15 (30 DS) by Dr. D. S. at a pharmacy in Hemet. On July 7, 2011, Respondents filled Rx # 955023  
16 for 240 oxycodone 30mg by PA W., 28 days early. On July, 29, 2011, V.E. had Rx # 1263879  
17 filled for 240 oxycodone 30mg (40DS) by Dr. S. at another pharmacy. On August 16, 2011,  
18 Respondents filled Rx # 958271 for 120 oxycodone 30mg by Dr. K. Y., 23 days early. On  
19 September 8, 2011, V.E. had Rx # 1025218 filled for 120 oxycodone 30mg (30 DS) by Dr. B. H.  
20 located in San Bernardino at a pharmacy in Temecula. On September 16, 2011, Respondents filled  
21 Rx #960793 for 240 oxycodone 30mg by Dr. S K., 22 days early. On November 4, 2011, V.E. had  
22 Rx # 506813 filled for 240 oxycodone 30mg (40 DS) by Dr. S. at Walgreens #1081 in Hemet. On  
23 November 18, 2011, Respondents filled Rx # 966696 for 240 oxycodone 30mg by Dr. SK, 26  
24 days early.

25 n. Respondents failed to obtain PARS, which would have alerted them to doctor  
26 shopping by J.I., who went to eight (8) pharmacies and four (4) prescribers from approximately  
27 April 18, 2011 to February 9, 2012. Specifically, on May 19, 2011, J.I. who resided in San  
28 Bernardino, had Rx # 7086 filled for 240 oxycodone 30mg (30 DS) by Dr. J. G. (office in Van

1 Nuys) at a pharmacy in Santa Ana. On May 25, 2011, Respondents filled Rx # 951268 for 240  
2 oxycodone 30mg by Dr. J.G., 24 days early. On June 27, 2011, J.I. had Rx # 2006641 filled for  
3 240 oxycodone 30mg (30 DS) by Dr. J.G. at a pharmacy in Fontana. On June 27, 2011,  
4 Respondents filled Rx # 953918 for 240 oxycodone 30mg by Dr. J.G., 26 days early. On July, 6,  
5 2011, J.I. had Rx # 2033141 filled for 240 oxycodone 30mg (30 DS) by Dr. G. at Cole's Care  
6 Pharmacy in Fontana. On July 25, 2011, Respondents filled Rx # 956518 for 240 oxycodone  
7 30mg by Dr. G., 11 days early. On January 2, 2012, J.I. had Rx # 1366275 filled for 140  
8 oxycodone 30mg (23 DS) by PA B. E. (office in Corona) at Walgreens in San Bernardino. On  
9 January 12, 2012, Respondents filled Rx # 971702 for 120 oxycodone 30mg by Dr. E. C. (office in  
10 Los Angeles), 13 days early. On January 29, 2012, J.I. had Rx # 1108944 filled for 140 oxycodone  
11 30mg (35 DS) by PA E. at a pharmacy in San Bernardino. On February 9, 2012, Respondents  
12 filled Rx # 974493 for 150 oxycodone 30mg by Dr. E. C., 24 days early.

13 o. Respondents failed to obtain PARS, which would have alerted them to doctor  
14 shopping by J. M., who went to 36 pharmacies in Loma Linda, Fontana, San Bernardino,  
15 Woonsocket, Colton, Rialto, Reseda, Covina, Apple Valley, Upland, Ontario, Rancho  
16 Cucamonga, San Jacinto, Redlands, Altadena, Yucaipa and Corona, and 23 prescribers located in  
17 Stockton, Northridge, San Bernardino, Corona, Huntington Beach, Colton, Los Angeles, Chino,  
18 Loma Linda, Rancho Cucamonga, Fontana, Rialto, Victorville and Highland, from approximately  
19 May 25, 2011 to April 11, 2013. Specifically, On January 3, 2012, J. M. who resided in Fontana,  
20 had Rx # 1366945 filled a prescription of 100 oxycodone 30mg (24DS) by PA B. E. (office in  
21 Corona). On January 6, 2012 Respondents filled Rx# 971212 for 240 oxycodone 30mg by Dr.  
22 S.A., 22 days early, at Walgreens #6685 in San Bernardino. On July 12, 2012, J.M. had Rx #  
23 186490 filled a prescription of 150 hydrocodone/apap 325/10 (25 DS) by Dr. N. N. at a pharmacy  
24 in Rancho Cucamonga. On July, 16, 2012, Respondents filled Rx # 964907 for 60  
25 hydrocodone/apap 325/10 by Dr. G. C., 21 days early.

26 p. Respondents failed to review their own patient profile or drug dispensing  
27 history, which would have alerted them to doctor shopping by I. D. who went to five (5) doctors  
28 for carisoprodol 350mg, four (4) doctors for hydrocodone products and four (4) doctors for

1 promethazine with codeine. Respondents filled prescription 977642 for carisoprodol, a 30 day  
2 supply, on July 11, 2012 and filled prescription 985171 for carisoprodol, a 30 day supply, on July  
3 19, 2012, 22 days early.

4 q. Respondent failed to review their own patient profile where they would have  
5 noticed the early refills as follows. W. F. had Rx # 992787 for 30 day supply of Opana ER 40mg  
6 on November 8, 2012 by Respondents. According to the controlled substances logs, Respondents  
7 filled Rx # 993169 for Opana ER 40mg on November 9, 2012, 29 days early. W.F. had Rx #  
8 948843 filled for a 11 day supply of promethazine with codeine on June 20, 2011 by Respondents.  
9 Respondents filled Rx # 953741 for promethazine with codeine on June 23, 2011, 8 days early.  
10 W.F. had Rx # 959174 filled for an 11 day supply of promethazine with codeine on October 18,  
11 2011. Respondent filled Rx # 963948 for promethazine with codeine on 10/21/2011, 8 days early  
12 and then Rx # 963948 was refilled on October 26, 2011, 7 days early.

13 r. Respondent failed to review their own patient profile where they would have  
14 noticed the early refills as follows. On August 11, 2011, D. M., residing in Highland/San  
15 Bernardino, had Rx # 957899 filled by Respondents for a 30 day supply of oxycodone 30mg. On  
16 August 12, 2011, Respondents filled Rx # 958009 for oxycodone 30mg, 29 days early. D.M. had  
17 Rx 950222 filled for a 30 day supply of oxycodone 30mg on May 11, 2011 by Respondents. On  
18 May 18, 2011, Respondents filled Rx # 950789 for oxycodone 30mg, 23 days early. D.M. had Rx  
19 # 955523 filled for a 30 day supply of oxycodone 30mg on July 14, 2011 by Respondents.  
20 Respondents then filled Rx # 955632 for D.M. for oxycodone 30mg on July, 15, 2011, 29 days  
21 early. D.M. had Rx # 952946 filled for a 16 day supply of promethazine with codeine on June 15,  
22 2011 by Respondents. Respondents then filled Rx # 953048 for promethazine with codeine on  
23 June 16, 2011, 15 days early. D.M. had Rx # 955435 filled for 10 day supply of promethazine with  
24 codeine on July 13, 2011 by Respondents. Respondent then filled Rx # 955631 for promethazine  
25 with codeine on July 15, 2011, 8 days early. D.M. had Rx # 957900 filled for a 30 day supply of  
26 promethazine with codeine on August 11, 2011 by Respondents. Respondents then filled Rx #  
27 958010 for promethazine with codeine on August 12, 2011, 29 days early.



1 s. Respondents failed to review a patient profile or drug dispensing history, which  
2 would have alerted them to doctor shopping by J.M.#1, who was residing in Moreno Valley and  
3 went to four (4) doctors in Pasadena, Rosemead and Rialto for hydrocodone products from  
4 approximately January 24, 2011 to January 23, 2013 filling approximately 11 different  
5 prescriptions in four (4) months.

6 24. Respondents filled certain prescriptions whereby patients signed a "Certificate of  
7 Acceptable Manufacturer of Oxycodone". By signing this certificate, the patient was requesting a  
8 manufacturer of Oxycodone that was not paid for by their insurance company, that they did not  
9 want to wait for insurance approval and that they agreed not to return the item for a refund.

10 Insurance companies typically refuse to pay or reimburse patients for these highly abused forms of  
11 Oxycodone. The two prescriptions found at Respondent's location are as follows:

12 a. Rx # 995049, dated 12/12/2012 for oxycodone 30mg # 180 by PA S.W.

13 b. Rx # 996254 dated 1/3/2012 for oxycodone 30 mg E 180 by PA S.W.

## 14 **SECOND CAUSE FOR DISCIPLINE**

15 (Unprofessional Conduct, Excessive Furnishing of Controlled Substances and Assisting/Abetting  
16 Violations of Law)

17 25. Respondents Loma Linda Pharmacy and Kenneth Ray Hallbauer are subject to  
18 disciplinary action under section 4301 subdivision (o) and (j) in conjunction with Health and Safety  
19 Code sections 11153 subdivision (a) and 11173 subdivision (a) in that that Respondents, while  
20 operating at 25620 Barton Road, Loma Linda, California 92354, assisted and abetted habitual  
21 doctor shoppers and drug abusers in obtaining controlled substances. The circumstances  
22 surrounding these allegations are set forth above in paragraph 20, subparagraphs (a) through (u),  
23 and paragraph 21, and are incorporated herein as thought set forth in full.

## 24 **OTHER MATTERS**

25 26. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number  
26 PHY 44306, issued to Loma Linda Pharmacy, Inc. (LLP), while Douglas G. Olsen (Olsen) has  
27 been acting as the manager, administrator, owner, member, officer, director, associate, or partner  
28

1 of LLP and had knowledge of or knowingly participated in any conduct for which PHY 44306,  
2 issued to LLP was revoked, suspended or placed on probation, Olsen shall be prohibited from  
3 serving as a manager, administrator, owner, member, officer, director, associate, or partner of a  
4 licensee for five years if PHY 44306, issued to LLP is placed on probation or until PHY 44306,  
5 issued to LLP is reinstated if it is revoked.

6 **PRAYER**

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

9 1. Revoking or suspending Pharmacy Permit Number PHY 44306, issued to Loma Linda  
10 Pharmacy, Inc., Douglas G. Olson, President

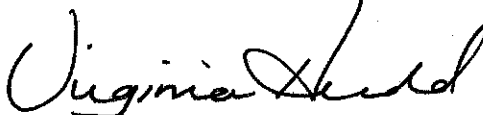
11 2. Revoking or suspending Pharmacist License Number RPH 44410, issued to Kenneth  
12 Ray Hallbauer;

13 3. Prohibiting Douglas G. Olson from serving as a manager, administrator, owner,  
14 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit No.  
15 PHY 44306 issued to Loma Linda Pharmacy, Inc. is placed on probation or until Pharmacy Permit  
16 No. PHY 44306 issued to Loma Linda Pharmacy, is reinstated if Pharmacy Permit No. PHY  
17 44306 issued to Loma Linda Pharmacy is revoked;

18 4. Ordering Loma Linda Pharmacy, Inc. and Kenneth Ray Hallbauer to pay the Board of  
19 Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to  
20 Business and Professions Code section 125.3; and

21 5. Taking such other and further action as deemed necessary and proper.

22  
23 DATED: 4/27/18



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

24  
25  
26  
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## EXHIBIT B

1 DANIEL E. LUNGREN, Attorney General  
of the State of California  
2 TIMOTHY L. NEWLOVE,  
Deputy Attorney General  
3 State Bar No. 73428  
California Department of Justice  
4 300 South Spring Street, Suite 500  
Los Angeles, California 90013  
5 Telephone: (213) 897-2559

6 Attorneys for Complainant

7  
8 BEFORE THE  
BOARD OF PHARMACY  
9 DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

10 In the Matter of the Accusation ) Case No. 1708  
11 Against: )  
12 LOMA LINDA PHARMACY ) STIPULATION FOR  
25455 Barton Road, No. 102-A ) DISCIPLINE AND  
13 Loma Linda, California 92354 ) ORDER  
Pharmacy Permit No. PHY-34564 )  
14 )  
DOUGLAS GROVER OLSON )  
15 25455 Barton Road, No. 102-A )  
Loma Linda, California 92354 )  
16 Certificate No. RPH-26777 )  
17 Respondents. )

18  
19 IT IS HEREBY STIPULATED AND AGREED by and between the  
20 California Board of Pharmacy and respondents, Douglas Grover  
21 Olson and Loma Linda Pharmacy, that the following matters are  
22 true:

23 1. On December 13, 1993, the Board of Pharmacy of the  
24 State of California (hereinafter the "Board") filed an  
25 Accusation, Case No. 1708, against Douglas Grover Olson  
26 (hereinafter "Olson") and Loma Linda Pharmacy. Said Accusation  
is currently pending.

27 2. The Accusation, Case No. 1708, and all statutorily

1 required documents were duly and properly served upon respondents  
2 who have filed a Notice of Defense. A copy of the Accusation,  
3 Case No. 1708, is attached hereto as Exhibit "A" and incorporated  
4 herein by this reference.

5 3. The Complainant in Accusation, Case No. 1708, is  
6 Patricia Harris, Executive Officer of the Board, and she brought  
7 the Accusation solely in her official capacity.

8 4. At all times material herein, Complainant Harris  
9 has been represented by the counsel of the Attorney General of  
10 the State of California and is currently represented by and  
11 through Timothy L. Newlove, Deputy Attorney General.

12 5. At all times material herein, respondent Olson was  
13 and currently is licensed by the Board as a pharmacist under  
14 Pharmacist Certificate No. RPH-26777.

15 6. At all times material herein, respondent Loma Linda  
16 Pharmacy was and currently is licensed by the Board as a pharmacy  
17 under Pharmacy Permit No. PHY-34564.

18 7. At all times material herein, respondents, Olson  
19 and Loma Linda Pharmacy, have been represented by Donald B.  
20 Brown, attorney-at-law, of the Law Offices of Berger & Brown.

21 8. Respondents, Olson and Loma Linda Pharmacy, have  
22 fully considered the charges contained in the Accusation, Case  
23 No. 1708, and have been fully advised regarding their legal  
24 rights and the effects of this Stipulation.

25 9. Respondents, Olson and Loma Linda Pharmacy,  
26 understand the nature of the charges alleged in the Accusation,  
27 Case No. 1708, as constituting causes for imposing discipline

upon the Pharmacy Permit held by respondent Loma Linda Pharmacy and the Pharmacist Certificate held by respondent Olson. Respondents are fully aware of their right to a hearing on the charges contained in the Accusation, Case No. 1708, their right to confront and cross-exam witnesses against them, their right to reconsideration, appeal and any and all other rights which may be accorded respondents under the California Administrative Procedure Act. Respondents, Olson and Loma Linda Pharmacy, freely, voluntarily, and intelligently waive and relinquish said rights.

10. Respondents, Olson and Loma Linda Pharmacy, admit the truth of the allegations set forth in Paragraphs 1 through 4, 20, 20A through 20E, 24, 24A, 24B, 27, 31, 31A through 31E, 36, and 36A through 36D of the Accusation, Case No. 1708, and agree that the Pharmacist Certificate of respondent Olson and the Pharmacy Permit of respondent Loma Linda Pharmacy are thereby subject to discipline under the provisions of the California Business and Professions Code, California Health and Safety Code, California Code of Regulations and United States Statutes and Code of Federal Regulations enumerated in the First, Second, Third, Fourth and Fifth Causes of Accusation in the Accusation, Case No. 1708.

11. The admissions of truth concerning the allegations in the Accusation, Case No. 1708, are made herein only for the purpose of this Stipulation for Discipline and Order, and for no other reason.

12. Respondents, Olson and Loma Linda Pharmacy, agree

1 to be bound by the Board's Disciplinary Order as set forth below.

2 13. In consideration of the foregoing admissions and  
3 findings, Complainant Harris and respondents, Olson and Loma  
4 Linda Pharmacy, stipulate and agree that the Board shall, without  
5 further notice or formal proceeding, issue and enter the  
6 following Order in the Accusation, Case No. 1708:

7  
8 DISCIPLINARY ORDER

9  
10 RESPONDENT DOUGLAS GROVER OLSON

11 IT IS HEREBY ORDERED that Pharmacist Certificate, No.  
12 RPH-26777, issued to respondent Douglas Grover Olson is revoked.  
13 However, said revocation is stayed and respondent Olson is placed  
14 on probation to the Board for a period of three (3) years on the  
15 following terms and conditions:

16 (1) ACTUAL SUSPENSION: As part of probation,  
17 respondent Olson is suspended from the practice of pharmacy for  
18 sixty (60) days beginning on the effective date of the Decision  
19 herein.

20 During said suspension, respondent Olson shall not  
21 enter any pharmacy prescription area or any portion of the  
22 licensed premises of a wholesaler, manufacturer or any other  
23 distributor of drugs which is licensed by the Board and where  
24 dangerous drugs or controlled substances are maintained.  
25 Respondent Olson shall not practice pharmacy or do any act  
26 involving drug selection, selection of stock, manufacturing,  
27 compounding, dispensing or patient consultation; nor shall

respondent manage, administer, be a consultant to or have access to or control over the ordering, manufacturing or dispensation of dangerous drugs or controlled substances for anyone or any entity licensed by the Board.

(2) OBEY ALL LAWS: Respondent Olson shall obey all federal and state laws and regulations substantially related to the practice of pharmacy.

(3) REPORTING TO THE BOARD: Respondent Olson shall report to the Board or its designee quarterly. Said report shall be either in person or in writing, as directed. Should the final probation report not be made as directed, the period of probation shall be extended until such time as the final report is made.

(4) PEER REVIEW: Respondent Olson shall submit to peer review as deemed necessary by the Board.

(5) CONTINUING EDUCATION: Respondent Olson shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.

(6) NOTICE TO EMPLOYERS: Respondent Olson shall notify all present and prospective employers of the Decision in this case and the terms, conditions and restriction imposed on respondent by said Decision.

Within thirty (30) days of the effective date of this Decision, and within fifteen (15) days of respondent Olson undertaking new employment, respondent shall cause his employer to report to the Board in writing acknowledging that the employer has read the Decision in this matter.

Should respondent Olson work for or be employed by or



1 through a pharmacy employment service, it shall be the obligation  
2 of the respondent to ensure the pharmacy at which he is to be  
3 employed or used of the fact and terms of this Disciplinary Order  
4 in advance of respondent commencing work at the pharmacy.

5 "Employment" within the meaning of this provision shall  
6 include any full-time, part-time, temporary or relief service as  
7 a pharmacist, whether respondent Olson is considered an employee  
8 or independent contractor.

9 (7) NO PRECEPTORSHIPS, SUPERVISION OF INTERNS OR BEING  
10 PHARMACIST-IN-CHARGE: Respondent Olson shall not supervise any  
11 registered intern and shall not perform any of the duties of a  
12 preceptor. Respondent Olson shall retain a consultant at his own  
13 expense who shall be responsible for reviewing the pharmacy  
14 operations of Loma Linda Pharmacy on a monthly basis for  
15 compliance by respondent Olson with state and federal laws and  
16 regulations governing pharmacy and for compliance by respondent  
17 with the obligations of a pharmacist-in-charge. The consultant  
18 shall be a pharmacist licensed by and not on probation to the  
19 Board and shall be submitted to the Board for its prior approval  
20 within thirty (30) days of the effective date of the Decision  
21 herein. In no event shall respondent be pharmacist-in-charge of  
22 more than one pharmacy or any pharmacy of which he is not the  
23 sole owner.

24 (8) NO OWNERSHIP OF PHARMACY: Respondent Olson shall  
25 not have any legal beneficial interest in any business, firm,  
26 partnership, or corporation currently or hereinafter licensed by  
27 the Board and shall not own any pharmacy other than respondent

1 Loma Linda Pharmacy.

2 (9) TOLLING OF PROBATION: Should respondent Olson  
3 leave California to reside or practice outside this state,  
4 respondent must notify the Board in writing of the dates of  
5 departure and return. Periods of residency or practice outside  
6 the state shall not apply to the reduction of the probationary  
7 period.

8 (10) TOLLING OF SUSPENSION: Should respondent Olson  
9 leave California to reside or practice outside this state, or for  
10 any period exceeding thirty (30) days, respondent must notify the  
11 Board in writing of the dates of departure and return. Periods  
12 of residency or practice outside the state or any absence  
13 exceeding a period of thirty (30) days shall not apply to the  
14 reduction of the ~~ninety (90)~~ <sup>sixty day (60 day)</sup> suspension period described in  
15 Paragraph (1) hereinabove.

16 Respondent Olson shall not practice pharmacy upon  
17 returning to California until he receives notification from the  
18 Board that the period of suspension has been completed.

19 (11) VIOLATION OF PROBATION: Should respondent Olson  
20 violate probation in any respect, the Board, after giving  
21 respondent notice and an opportunity to be heard, may revoke  
22 probation and carry out the disciplinary order which was stayed.  
23 If a Petition to Revoke Probation is filed against respondent  
24 during probation, the Board shall have continuing jurisdiction  
25 until the matter is final, and the period of probation shall be  
26 extended until the matter is final.

27 (12) STATUS OF LICENSE: Respondent Olson shall, at

1 all times while on probation, maintain an active, current license  
2 with the Board, including any period during which suspension or  
3 probation is tolled.

4 Should respondent's Pharmacist Certificate expire by  
5 operation of law or otherwise, upon renewal or reinstatement,  
6 respondent's certificate shall be subject to any and all terms of  
7 this probation not previously satisfied.

8 (13) REIMBURSEMENT FOR INVESTIGATION COSTS:

9 Respondent Olson shall reimburse the Board the amount of  
10 \$2,313.30 for the cost of the investigation and prosecution of  
11 this matter. Payment of the \$2,313 shall be made within one (1)  
12 year of the effective date of the Decision herein by cashiers  
13 check(s) on a quarterly basis made payable to the California  
14 Board of Pharmacy. Should any part of cost recovery not be paid,  
15 the period of probation shall be extended until said amounts are  
16 paid.

17 (14) COMPLETION OF PROBATION: Upon successful

18 completion of probation, the Pharmacist Certificate of respondent  
19 Olson shall be fully restored.

20  
21 RESPONDENT LOMA LINDA PHARMACY

22 IT IS HEREBY FURTHER ORDERED that Pharmacy Permit, No.  
23 PHY-34564 issued to respondent Loma Linda Pharmacy is revoked.  
24 However, the revocation is stayed and respondent Loma Linda  
25 Pharmacy is placed on probation for a period of three (3) years  
26 upon the following terms and conditions:

27 (1) ACTUAL SUSPENSION: As part of probation,

1 respondent Loma Linda Pharmacy is suspended from the practice of  
2 pharmacy for seven (7) days beginning on the effective date of  
3 the Decision herein.

4 (2) OBEY ALL LAWS: Respondent Loma Linda Pharmacy  
5 shall obey all federal and state laws and regulations  
6 substantially related to the practice of pharmacy.

7 (3) VIOLATION OF PROBATION: Should respondent Loma  
8 Linda Pharmacy violate probation in any respect, the Board, after  
9 giving respondent an opportunity to be heard, may revoke  
10 probation and carry out the Disciplinary Order which was stayed.  
11 If a Petition to Revoke Probation is filed against respondent  
12 Loma Linda Pharmacy during probation, the Board shall have  
13 continuing jurisdiction until the matter is final, and the period  
14 of probation shall be extended until the matter is final.

15 (4) NOTICE TO EMPLOYEES: Respondent Loma Linda  
16 Pharmacy, upon or before the effective date of this Decision,  
17 shall post or circulate a notice to all employees involved in  
18 pharmacy operations which accurately recites the terms and  
19 conditions of probation. Respondent shall be responsible for  
20 said notice being immediately available to said employees.

21 "Employees" as used in this provision includes all  
22 full-time, part-time, temporary and relief employees and  
23 independent contractors employed or hired at any time during  
24 probation. Should the notice required by this provision be  
25 posted, it shall be posted in a prominent place and shall remain  
26 posted throughout probation.

27 (5) STATUS OF LICENSE: Respondent Loma Linda Pharmacy

1 shall, at all times while on probation, maintain an active,  
2 current license with the Board, including any period during which  
3 probation is tolled.

4           Should the Pharmacy Permit of respondent expire by  
5 operation of law or otherwise, upon renewal or reinstatement,  
6 respondent's Pharmacy Permit shall be subject to any and all  
7 terms of this probation not previously satisfied.

8           (6) OWNERS AND OPERATORS - KNOWLEDGE OF THE LAW:

9 Respondent Loma Linda Pharmacy shall provide, within thirty (30)  
10 days after the effective date of this Decision, signed and dated  
11 statements from the owners, officers, or any owner or holder of  
12 10% or more of the interest in respondent's pharmacy stating that  
13 said individuals have read and are familiar with federal and  
14 state laws and regulations governing the practice of pharmacy.

15           (7) REIMBURSEMENT FOR INVESTIGATION COSTS: Respondent

16 Loma Linda shall reimburse the Board the amount of \$2,313.30 for  
17 the cost of the investigation and prosecution of this matter.  
18 Payment of the \$2,313 shall be made within one (1) year of the  
19 effective date of the Decision herein by cashiers check(s) on a  
20 quarterly basis made payable to the California Board of Pharmacy.  
21 Should any part of cost recovery not be paid, the period of  
22 probation shall be extended until said amounts are paid.

23           (8) COMPLETION OF PROBATION: Upon successful

24 completion of probation, the Pharmacy Permit of respondent Loma  
25 Linda Pharmacy shall be fully restored.

26 /

27 /

SUBMISSION OF STIPULATION

I have read and reviewed the terms and conditions of this Stipulation for Discipline and Order on behalf of respondents, Douglas Grover Olson and Loma Linda Pharmacy. I understand that this is an offer in settlement made to the Board of Pharmacy of the State of California and will not become effective unless and until the Board formally adopts the Stipulation as its Decision in this matter. I expressly acknowledge that if adopted, the Pharmacist Certificate of respondent Douglas Grover Olson and the Pharmacy Permit of respondent Loma Linda Pharmacy shall be placed upon probation under certain specified terms and conditions. I voluntarily enter into the instant Stipulation and agree to be bound by the terms of the Disciplinary Order herein.

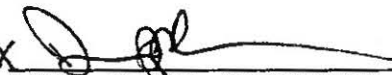
DATED:

9-8-94

x   
DOUGLAS GROVER OLSON  
Respondent

DATED:

9-8-94

x   
LOMA LINDA PHARMACY  
Respondent  
By: DOUGLAS GROVER OLSON

DATED:

SEP 7 1994

  
DONALD B. BROWN  
BERGER & BROWN  
Attorneys for Respondent

SUBMISSION

This Stipulation for Discipline and Order is submitted to the Board of Pharmacy of the State of California for consideration and acceptance in the disciplinary action, Case No. 1708. In the event that the Board rejects the Stipulation in this matter, any admissions of fact and characterizations of law set forth hereinabove shall be null, void and inadmissible in any other proceeding involving the parties herein.

DATED:

SEPT. 13, 1994


DANIEL E. LUNGREN  
Attorney General of the State  
of California



Timothy L. Newlove  
Deputy Attorney General

ADOPTION AND DECISION

The Stipulation for Discipline and Order in this matter is formally adopted as the Decision in Accusation, Case No. 1708, as to respondents, Douglas Grover Olson and Loma Linda Pharmacy, by the Board of Pharmacy of the State of California on this 14th day of November, 1994, and shall become effective on the 13th day of December, 1994.

  
BOARD OF PHARMACY



DANIEL E. LUNGREN, Attorney General  
of the State of California  
TIMOTHY L. NEWLOVE,  
Deputy Attorney General  
California Department of Justice  
300 South Spring Street, Suite 500  
Los Angeles, California 90013  
Telephone: (213) 897-2559

Attorneys for Complainant

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

In the Matter of the Accusation	)	Case No. 1708
Against:	)	
	)	ACCUSATION
LOMA LINDA PHARMACY	)	
25455 Barton Road, No. 102-A	)	
Loma Linda, California 92354	)	
Pharmacy Permit No. PHY-34564	)	
	)	
DOUGLAS GROVER OLSON	)	
25455 Barton Road, No. 102-A	)	
Loma Linda, California 92354	)	
Certificate No. RPH-26777	)	
	)	
Respondents.	)	

The Complainant, Patricia F. Harris, for cause of  
accusation against Loma Linda Pharmacy and Douglas Grover Olson  
alleges as follows:

PARTIES

1. The Complainant, Patricia F. Harris, is the  
Executive Officer of the California State Board of Pharmacy  
(hereinafter the "Board") and makes this Accusation solely in her  
official capacity.

2. On December 23, 1987, the Board issued a Permit,  
No. PHY-34564, to respondent Loma Linda Pharmacy, Incorporated to

Exhibit "A"

1 do business as Loma Linda Pharmacy, Inc. (hereinafter respondent  
2 "Loma Linda Pharmacy") as a pharmacy. At all times material  
3 herein, respondent Loma Linda was and currently is licensed by  
4 the Board as a pharmacy. Said permit expires on December 1,  
5 1993.

6 3. On August 4, 1970, the Board issued Certificate No.  
7 RPH-26777 to respondent Douglas Grover Olson (hereinafter  
8 respondent "Olson") as a registered pharmacist. At all times  
9 material herein, respondent Olson was and currently is licensed  
10 by the Board as a registered pharmacist. His license expires on  
11 July 31, 1994.

12 4. At all times material herein from December 23, 1987  
13 to the present, respondent Olson was the pharmacist-in-charge of  
14 respondent Loma Linda Pharmacy and, as such, respondent Olson was  
15 responsible for the compliance by Loma Linda Pharmacy of state  
16 and federal laws pertaining to the practice of pharmacy pursuant  
17 to Business and Professions Code Section 4054.

18 5. At all times material herein, respondent Loma Linda  
19 Pharmacy operated as a pharmacy within the meaning of Business  
20 and Professions Code Section 4035. At all times material herein,  
21 respondents, Olson and Loma Linda Pharmacy, and each of them,  
22 were conducting activity which required a license within the  
23 meaning of Business and Professions Code Section 4050.

24 JURISDICTION

25 6. Complainant brings this Accusation under the powers  
26 vested in the Board in Business and Professions Code Sections  
27 4350 and 4359 to suspend or revoke certificates, licenses,

1 permits and registrations issued by the Board pursuant to the  
2 California Pharmacy Act, Chapter 9, Division 2, Sections 4000 et.  
3 seq. of the Business and Professions Code.

4           7. Under Business and Professions Code Section 4350.5,  
5 the Board shall take disciplinary action against the holder of a  
6 license or permit for unprofessional conduct. Section 4350.5  
7 further provides that unprofessional conduct is a violation of or  
8 attempting to violate, directly or indirectly, or assisting in or  
9 abetting the violation of or conspiring to violate a provision or  
10 term of the California Pharmacy Act, a provision or term of  
11 federal or state law or regulation governing the practice of  
12 pharmacy, and a regulation established by the Board.

13           8. Under Business and Professions Code Section 4363,  
14 the violation of any of the California statutes regulating  
15 controlled substances or dangerous drugs constitutes  
16 unprofessional conduct.

17                           FIRST CAUSE OF ACCUSATION

18   MISBRANDING

19           9. Complainant incorporates herein by this reference  
20 the Preamble and each of the allegations set forth in Paragraphs  
21 1 through 8 hereinabove.

22           10. Business and Professions Code Section 4009  
23 provides that the Board may institute such action or actions as  
24 may be provided by law and which, in its discretion, are  
25 necessary, to prevent the sale of pharmaceutical preparations and  
26 drugs, inter alia, which violate any provision of the Sherman  
27 Food, Drug, and Cosmestic Law, Division 21, Health and Safety

1 Code Sections 26000 et. seq. (hereinafter the "Sherman Law").

2 11. Under Health and Safety Code Section 26010, the  
3 term "drug" within the meaning of the Sherman Law is any of the  
4 following:

5 "(a) Any article which is recognized in an official  
6 compendium.

7 "(b) Any article which is used or intended for use in  
8 the diagnosis, cure, mitigation, treatment, or prevention of  
9 disease in man or any other animal.

10 "(c) Any article other than food, which is used or  
11 intended to affect the structure or any function of the body of  
12 man or any other animal.

13 "(d) Any article which is used or intended for use as  
14 a component of any article designated in subdivision (a), (b), or  
15 (c) of this section."

16 12. Under Health and Safety Code Section 26016, the  
17 term "label" within the meaning of the Sherman Law is a display  
18 of written, printed, or graphic matter upon a food, drug, device,  
19 or cosmetic or upon its immediate container.

20 13. Under Health and Safety Code Section 26017, the  
21 term "labeling" within the meaning of the Sherman Law is any  
22 label or other written, printed, or graphic matter upon a food,  
23 drug, device, or cosmetic or upon its container or wrapper, or  
24 which accompanies any food, drug, device, or cosmetic.

25 14. Under Health and Safety Code Section 26632, any  
26 drug is misbranded unless it bears a label containing all of the  
27 following information:

1           "(a) The name and place of business of the  
2 manufacturer, packer, or distributor.

3           "(b) An accurate statement of the quantity of the  
4 contents in terms of weight, measure, or numerical count."

5           15. Under Health and Safety Code Section 26641, a drug  
6 is misbranded if its container is so made, formed or filled as to  
7 be misleading.

8           16. Under Health and Safety Code Section 26642(c), any  
9 drug is misbranded if the contents of the original package have  
10 been, wholly or partly, removed and replaced with other material  
11 in the package.

12           17. Under Health and Safety Code Section 26650, it is  
13 unlawful for any person to manufacture, sell, deliver, hold, or  
14 offer for sale any drug or device that is misbranded.

15           18. Under Health and Safety Code Section 26651, it is  
16 unlawful for any person to misbrand any drug.

17           19. Under Health and Safety Code Section 26653, it is  
18 unlawful for any person to alter, mutilate, destroy, obliterate,  
19 or remove the label of any part of the labeling of any drug if  
20 such act results in the drug being misbranded.

21           20. Respondents, Olson and Loma Linda Pharmacy, and  
22 each of them, are subject to discipline by the Board pursuant to  
23 Business and Professions Code Sections 4009, 4350, 4350.5 and  
24 4359, for unprofessional conduct within the scope of Business and  
25 Professions Code Sections 4350.5 and 4359, by reason of  
26 violations of Health and Safety Code Sections 26632, 26641,  
27 26642(c), 26650, 26651 and 26653, in that respondents misbranded

1 drug samples; sold, delivered, held or offered for sale  
2 misbranded drugs; and removed the label of drugs which resulted  
3 in the drugs being misbranded, according to the following facts:  
4           A. On or about July 29, 1992, an Inspector from the  
5 Board conducted an inspection of the premises of respondent Loma  
6 Linda Pharmacy. During said inspection, the Inspector found  
7 misbranded drugs located in the area where respondents maintained  
8 the stock of drugs for sale to the public. The majority of  
9 misbranded drugs were contained in different sized vials marked  
10 by a Loma Linda Pharmacy label entitled "Office Use" which  
11 contained computer generated information. In the following list,  
12 these drugs are indicated under the "Package" column by "R" which  
13 stands for "Respondent". Numerous misbranded drugs consisted of  
14 drug samples which had been placed in the "Office Use" vials. In  
15 the following list, these drugs are indicated under the "Package"  
16 column by "R - Sample". In addition, numerous misbranded drugs  
17 consisted of drug samples which had been placed in manufacturer's  
18 containers. In the following list, these drugs are indicated  
19 under the "Package" column by "M - Sample". The Board inspector  
20 found the following described misbranded drugs during her  
21 inspection:

22	<u>DRUG</u>	<u>AMOUNT</u>	<u>PACKAGE</u>
23	Accupril 10 mg.	100	R
24	Accupril 20 mg.	44	R
25	Acetazolamide 250 mg.	243	R
26	Acetohexamide 250 mg.	49	R
27	Altace 5 mg.	103	R

1	Anaprox DS	27	R - Sample
2	Anaprox DS	88	R - Sample
3	Axid 150 mg.		R
4	Axid 150 mg.	67	R
5	Axid 300 mg.	30	R
6	Axotal	83	R
7	Azo-Gantrisin (Generic)	142	R
8	Azulfidine Entabs	50	R
9	Bumex 0.5 mg.	50	R
10	Capozide 25/15	298	M - Sample
11	Capozide 25/15	95	R
12	Capozide 50/15	20	R
13	Cardene 20 mg.	63	R
14	Cardene 20 mg.	100	R
15	Cardene 30 mg.	190	R
16	Chloripseud TD 8-120	81	R
17	Chlorthalidone 50 mg.	437	R
18	Comhist LA	15	R
19	Corgard 20 mg.	56	R - Sample
20	Corgard 20 mg.	56	R - Sample
21	Corgard 40 mg.	162	M - Sample
22	Corgard 40 mg.	10	R - Sample
23	Corzide 40/15	55	R - Sample
24	Creon	72	R
25	Danocrine 100 mg.	46	R
26	Deconamine SR	8	R
27	Deconamine SR	48	R

1	Dilatrate SR 240 mg.	39	R
2	Dipentum 250 mg.	105	R
3	Dyrenium	15	R
4	Easprin	16	R
5	Entex LA	21	R
6	Entex LA	21	R
7	Ergot SL 1.0 mg.	62	R
8	Etrafon 2-10	56	R
9	Festalan	17	R
10	Fluoxymesterone 10 mg.	21	R
11	Fluphenazine 2.5 mg.	16	R
12	Fulvicin P/G 250 mg.	12	R
13	Furosemide 20 mg.	86	R
14	Glyname Prestab	326	R
15	Grisactin Ultra 125	33	R
16	Haloperidol 2 mg.	357	R
17	Hytrin 1 mg.	240	R - Sample
18	Hytrin 1 mg.	60	R - Sample
19	Hytrin 2 mg.	117	M - Sample
20	Hytrin 2 mg.	220	R - Sample
21	Isoptin SR 120 mg.	35	R
22	Isordil 40 mg.	20	R
23	K-Lyte Tabs	19, 20, 21	M - Sample
24	Mixed tabs (6 of K-Dur and 11 of K-tab)		R
25	Lasix 20 mg.	67	R
26	Levatol 20 mg.	77	M - Sample
27	Levatol 20 mg.	112	R



1	Levsin PB	72	R
2	Lodine 300 mg.	33	R
3	Lopid 600 mg.	70	R
4	Lopressor 100 mg.	49	R - Sample
5	Lopressor 100 mg.	91	M - Sample
6	Loxelco 500 mg.	23	R
7	Lotensin 20 mg.	140	R - Sample
8	Lozol 2.5 mg.	533	R
9	Lozol 2.5 mg.	59	R
10	Lozol 2.5 mg.	28	R
11	Lozol 2.5 mg.	152	R
12	Maxzide	4	R - Sample
13	Maxzide	95	M - Sample
14	MethyDopa/HCTZ	70	R
15	Meclomen 100 mg. (Generic)	160	R
16	Meclomen 50 mg.	22	R
17	Micronase 2.5 mg.	342	R
18	Micronase 2.5 mg.	84	R
19	Micronase 2.5 mg.	54	R
20	Moban 10 mg.	75	R
21	Monopril 10 mg.	284	R
22	Mycelex Troches	20	R
23	Naldecon Gen	42	R
24	Nalidixic Acid 500 mg.	14	R
25	Normozide 200/25	56	R
26	Ogen 0.625 mg.	46	R - Sample
27	Ogen 1.25 mg.	260	R - Sample

1	Ogen 2.5 mg.	66	R - Sample
2	Omniflox 400 mg.	12	R
3	Perphenazine/Amitriptyline	381	R
4	Plendil 5 mg.	28	R
5	Plendil 5 mg.	28	R
6	Polaramine 6 mg. Gen	100	R
7	Pondimin 20 mg.	81	R
8	Prinzide 12.5 mg.	72	R
9	Procan SR 500 mg.	24	R - Sample
10	Procan SR 750 mg.	48	R - Sample
11	Quinaglute Duratabs.	13	R
12	Quinidex Extentabs	50	R
13	Quinidex Extentabs	132	R
14	Relafen 500 mg.	62	R
15	Reserpine 0.25 mg.	142	R
16	Rondec TR	104	R
17	Rutuss	4	R
18	Rutuss DE	80	R
19	Rutuss (Generic)	100	R
20	Sinemet-CR	76	R
21	Sinemet-CR	62	R
22	Tagamet 300 mg.	3	R
23	Tagamet 800 mg.	6	R
24	Ten-K	16	R
25	Ten-K 10 mEq.	48	R
26	Tenex 1 mg.	513	R
27	Tenex 1 mg.	450	R

1	Tenex 2 mg.	1,000	R
2	Thiosulfil Fort 0.5	53	R
3	Ticlid 250 mg.	30	R - Sample
4	Tolectin 200 mg.	3	R
5	Tolectin 600 mg.	122	M - Sample
6	Tolectin DS 400 mg.	120	M - Sample
7	Tolectin DS 400 mg.	42	R - Sample
8	Toprol XL 100 mg.	24	R
9	Toprol XL 50 mg.	45	R
10	Trinalin Repetabs	60	R
11	Tripelennamine 50 mg.	213	R
12	Tripelennamine 50 mg.	197	R
13	Tuss-Ornade	20	R
14	Vaseretic	28	R - Sample
15	Vasodilan 20 mg. (Generic)	200	R
16	Verelan 180 mg.	84	R - Sample
17	Vitamin D 50 MU	100	R
18	Vitamin D 50 MU	61	R
19	Wigraine	48	R
20	Yutopar 10 mg.	20	R
21	Zantac 150 mg.	14	M - Sample
22	Zantac 150 mg.	26	R - Sample
23	Zestoretic 20/12.5	28	R
24	Zithromax 250 mg.	48	R
25	Zocor 10 mg.	276	R
26	Zocor 20 mg.	28	R
27	Zocor 10 mg.	108	R

B. At all times material herein, the drugs listed in

1 Paragraph 20A hereinabove were drugs within the meaning of Health  
2 and Safety Code Section 26010 and dangerous drugs within the  
3 meaning of Business and Professions Code Section 4211.

4 C. At all times material herein from October 8, 1990  
5 to July 28, 1992, respondents, Olson and Loma Linda Pharmacy, and  
6 each of them, repackaged or caused to be repackaged drugs listed  
7 in Paragraph 20A hereinabove into different sized vials marked  
8 with a Loma Linda Pharmacy label entitled "Office Use" which  
9 contained computer-generated information. By repackaging said  
10 drugs, respondents violated Health and Safety Code Sections  
11 26632, 26651 and 26653 in that the "Office Use" label did not  
12 contain the information required in Health and Safety Code  
13 Section 26632.

14 D. At all times material herein from November, 1990 to  
15 July, 1992, respondents received drug samples from physicians who  
16 practiced medicine in offices located in the building in which  
17 Loma Linda Pharmacy conducted business. During said time period,  
18 respondents, Olson and Loma Linda Pharmacy, and each of them,  
19 removed or caused to be removed certain drug samples from unit  
20 dose containers and repackaged or caused to be repackaged said  
21 drug samples into the above-described "Office Use" vials or into  
22 manufacturer's containers. Said activity constitutes a violation  
23 of Health and Safety Code Section 26651 in that respondents  
24 filled containers with drug samples without labeling the  
25 containers accordingly in violation of Health and Safety Code  
26 Section 26641; respondents placed drug samples in manufacturer's  
27 containers thereby replacing the original content of said

1 containers with other material in violation of Health and Safety  
2 Code Section 26642(c); and respondents removed drug samples from  
3 their packaging thereby destroying the labels on said packaging  
4 in violation of Health and Safety Code Section 26653.

5 E. During 1991 and 1992, respondents, Olson and Loma  
6 Linda Pharmacy, and each of them, violated Health and Safety Code  
7 Section 26650 in that respondents held the misbranded drugs  
8 described in Paragraph 20A hereinabove for sale to the public,  
9 sold said misbranded drugs to the public, and gave-away or  
10 delivered misbranded drug samples to the "Missionaries" of Loma  
11 Linda.

## 12 SECOND CAUSE OF ACCUSATION

### 13 SALE OF DRUG SAMPLES

14 21. Complainant incorporates herein by this reference  
15 the Preamble and each of the allegations set forth in Paragraphs  
16 1 through 8, 20A and 20D hereinabove.

17 22. Title 21, United State Code (hereinafter "21  
18 U.S.C.") Section 353(c)(1) provides that no person may sell,  
19 purchase or trade any drug sample. Under 21 U.S.C. Section  
20 353(c)(1), "drug sample" means a unit of a drug, subject to 21  
21 U.S.C. Section 353(b), which is not intended to be sold and is  
22 intended to promote the sale of the drug.

23 23. Under 21 U.S.C. Section 353(b)(1)(B), a drug which  
24 is subject to 21 U.S.C. Section 353(b) includes any drug which  
25 because of its toxicity or other potentiality for harmful effect,  
26 or the method of its use, or the collateral measures necessary to  
27 its use, is not safe for use except under the supervision of a

1 practitioner licensed by law to administer such drug.

2           24. Respondents, Olson and Loma Linda Pharmacy, and  
3 each of them, are subject to discipline by the Board pursuant to  
4 Business and Professions Code Sections 4350, 4350.5 and 4359, for  
5 unprofessional conduct within the scope of Business and  
6 Professions Code Section 4350.5, by reason of a violation of 21  
7 U.S.C. Section 353(c), in that respondents were selling or  
8 offering to sell drug samples, according to the following facts:

9           A. At all times material herein from November, 1990 to  
10 July, 1992, respondents received drug samples from physicians who  
11 practiced medicine in offices located in the building in which  
12 Loma Linda Pharmacy conducted business. During said time period,  
13 respondents repackaged or caused to be repackaged said drug  
14 samples in the manner described in Paragraphs 20A and 20D  
15 hereinabove.

16           B. On July 29, 1992, an Inspector from the Board  
17 conducted an inspection of the premises of respondent Loma Linda  
18 Pharmacy. During said inspection, the Inspector found drug  
19 samples in the area where respondents maintained the stock of  
20 drugs for sale to the public, including the "fast mover" and  
21 "will-call" sections of Loma Linda Pharmacy. The drug samples  
22 included tablets of drug samples which had been removed from unit  
23 dose sample packages and placed into "Office Use" vials or  
24 manufacturer's containers, as described in Paragraphs 20A and 20D  
25 hereinabove. The Inspector found the following described drug  
26 samples during the July 29, 1992 inspection:

27 /     /

- 1                                    DRUG SAMPLE
- 2                    1.    Anaprox DS
- 3                    2.    Capozide 25/15
- 4                    3.    Corgard 20 mg.
- 5                    4.    Corgard 40 mg.
- 6                    5.    Corzide 40/5
- 7                    6.    Hytrin 1mg.
- 8                    7.    Hytrin 2 mg.
- 9                    8.    K - Lyte Tabs
- 10                   9.    Lopressor 100 mg.
- 11                   10.   Lotensin 20 mg.
- 12                   11.   Maxzide
- 13                   12.   Ogen 0.625 mg.
- 14                   13.   Ogen 1.25 mg.
- 15                   14.   Ogen 2.5 mg.
- 16                   15.   Procan SR 500 mg.
- 17                   16.   Procan SR 750 mg.
- 18                   17.   Ticlid 250 mg.
- 19                   18.   Tolectin 600 mg.
- 20                   19.   Tolectin DS 400 mg.
- 21                   20.   Verelan 180 mg.
- 22                   21.   Zantac 150 mg.

23                   B.   At all times material herein, the drugs listed in

24   Paragraph 24A hereinabove were and are dangerous drugs within the

25   meaning of Business and Professions Code Section 4211 and drugs

26   which are not safe for use except under the supervision of a

27   practitioner licensed to administer such drugs within the meaning

1 of 21 U.S.C. Section 353(b)(1)(B).

2 THIRD CAUSE OF ACCUSATION

3 FURNISHING WITHOUT A PRESCRIPTION

4 25. Complainant incorporates herein by this reference  
5 the Preamble and each of the allegations set forth in Paragraphs  
6 1 through 8, 24A and 24B hereinabove.

7 26. Under Business and Professions Code Section  
8 4227(a), no person shall furnish any dangerous drug, except upon  
9 the prescription of a physician and surgeon, dentist, podiatrist,  
10 or veterinarian.

11 27. Respondents, Loma Linda Pharmacy and Olson, and  
12 each of them, are subject to discipline by the Board pursuant to  
13 Business and Professions Code Sections 4350, 4350.5 and 4359, for  
14 unprofessional conduct within the scope of Business and  
15 Professions Code Sections 4350.5 and 4363, by reason of  
16 violations of Business and Professions Code Section 4227(a), in  
17 that during 1991 and 1992, respondents gave certain drug samples,  
18 including the drug samples described in Paragraph 24A  
19 hereinabove, to "Missionaries" of Loma Linda without the  
20 authorization of a prescription issued by a physician and  
21 surgeon, dentist, podiatrist or veterinarian.

22 FOURTH CAUSE OF ACCUSATION

23 FAILURE TO MAINTAIN RECORDS

24 28. Complainant incorporates herein by this reference  
25 the Preamble and each of the allegations set forth in Paragraphs  
26 1 through 8, 20A, 20B, 20C, 20D, 20E, 24A and 27 hereinabove.

27 29. Business and Professions Code Section 4232



1 requires, in part, that a pharmacy and the pharmacist-in-charge  
2 keep and maintain a current inventory of each dangerous drug  
3 purchased, maintained and dispensed by the pharmacy.

4           30. Section 1718 of Title 16, California Code of  
5 Regulations (hereinafter the "Board Regulations") defines  
6 "current inventory" in Business and Professions Code Section 4232  
7 to include complete accountability of each dangerous drug handled  
8 by the pharmacy and pharmacist-in-charge.

9           31. Respondents, Loma Linda Pharmacy and Olson, and  
10 each of them, are subject to discipline by the Board pursuant to  
11 Business and Professions Code Sections 4350, 4350.5 and 4359, for  
12 unprofessional conduct within the scope of Business and  
13 Professions Code Sections 4350.5 and 4363, by reason of  
14 violations of Business and Professions Code Section 4232, as  
15 interpreted by Board Regulation 1718, in that respondents failed  
16 to maintain a current inventory, or any records, of the handling  
17 of certain dangerous drugs in the following respects:

18           A. Respondents failed to maintain records regarding  
19 the dangerous drugs which were repackaged into vials marked by  
20 the Loma Linda Pharmacy label entitled "Office Use", as described  
21 in Paragraphs 20A and 20C hereinabove.

22           B. Respondents failed to maintain records regarding  
23 the receipt of drug samples from physicians in the same building,  
24 as described in Paragraph 20D hereinabove.

25           C. Respondents failed to maintain records regarding  
26 the repackaging of drug samples which were placed into  
27 respondents' "Official Use" vials or into manufacturer's

1 containers, as described in Paragraphs 20A and 20D hereinabove.

2 D. Respondents failed to maintain records regarding  
3 the sale of drug samples to the public, as described in Paragraph  
4 24A hereinabove.

5 E. Respondents failed to maintain records regarding  
6 the delivery of drug samples to Loma Linda "Missionaries", as  
7 described in Paragraphs 20E and 27 hereinabove.

8 FIFTH CAUSE OF ACCUSATION

9 PURCHASE OF DRUGS FROM

10 UNLICENSED WHOLESALER

11 32. Complainant incorporates herein by this reference  
12 the Preamble and each of the allegations set forth in Paragraphs  
13 1 through 8 hereinabove.

14 33. Business and Professions Code Section 4038  
15 provides that a "Wholesaler" within the meaning of the California  
16 Pharmacy Act means and includes every person who acts as a drug  
17 wholesale merchant, broker, jobber, or agent, who sells for  
18 resale, or negotiates for distribution any drug included in  
19 Business and Professions Code Section 4211.

20 34. Under Business and Professions Code Section 4084,  
21 no person shall act as a wholesaler within the meaning of the  
22 California Pharmacy Act unless he/she has obtained a license or  
23 exemption for such activity from the Board.

24 35. Under Business and Professions Code Section  
25 4227(b), a pharmacy must purchase dangerous drugs within the  
26 meaning of Business and Professions Code Section 4211, inter  
27 alia, from a wholesaler licensed by the Board.

1           36. Respondents, Loma Linda Pharmacy and Olson, and  
2 each of them, are subject to discipline by the Board pursuant to  
3 Business and Professions Code Sections 4350, 4350.5 and 4359, for  
4 unprofessional conduct within the scope of Business and  
5 Professions Code Sections 4350.5 and 4363, by reason of a  
6 violation of Business and Professions Code Section 4227(b),  
7 according to the following facts:

8           A. At all times material herein, Charles Thomas Mills  
9 was and currently is licensed by the Board as a pharmacist,  
10 Certificate No. RPH-27413. At all times material herein, Charles  
11 Thomas Mills operated a pharmaceutical supply business called  
12 Pharmacokinetic Specialties.

13           B. At all times material herein, neither Charles  
14 Thomas Mills nor Pharmacokinetic Specialties were licensed by the  
15 Board as a wholesaler under Business and Professions Code Section  
16 4084.

17           C. During 1991 and 1992, respondents, Olson and Loma  
18 Linda Pharmacy, and each of them, purchased certain dangerous  
19 drugs from Charles Thomas Mills doing business as Pharmacokinetic  
20 Specialties.

21           D. At all times material herein, respondents knew, or  
22 in the exercise of care should have known, that Charles Thomas  
23 Mills and Pharmacokinethic Specialties were not licensed as  
24 wholesalers by the Board in that the drugs purchased therefrom  
25 were delivered in boxes with labels which referenced Riverside  
26 General Hospital where Charles Thomas Mills was employed and  
27 because the purchase prices of the drugs were unusually low.

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1 Board of the costs of investigation and enforcement of this case  
2 against respondents, Loma Linda Pharmacy and Olson, and each of  
3 them, according to proof.

4 WHEREFORE, Complainant prays that a hearing be had and  
5 that the Board of Pharmacy make its Order:

6 1. Revoking or suspending Pharmacist Certificate  
7 Number RPH-26777 issued to respondent Douglas Grover Olson.

8 2. Revoking or suspending Pharmacy Permit Number PHY-  
9 34563 issued to respondent Loma Linda Pharmacy, Incorporated  
10 doing business as Loma Linda Pharmacy, Inc..

11 3. Prohibiting respondent Douglas Grover Olson from  
12 serving as an officer, director, associate, or partner of any  
13 licensee, permittee, or registrant with rights issued by the  
14 Board for a period of five (5) years or until his license or  
15 permit is used or reinstated.

16 4. Directing respondents, Douglas Grover Olson and  
17 Loma Linda Pharmacy, and each of them, to pay the Board of  
18 Pharmacy the reasonable costs of the investigation and  
19 prosecution of this matter pursuant to Business and Professions  
20 Code Section 125.3, according to proof.

21 5. Taking such further action as is deemed necessary  
22 and proper.

23  
24 DATED: 12/13/93

P. J. Harris  
PATRICIA F. HARRIS  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California

Complainant

## EXHIBIT C

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

In the Matter of the Accusation Against:

Case No. 3335

**TOP CARE PHARMACY**

NGA NGUYEN

President and Pharmacist-in-Charge

8121 California Avenue

South Gate, CA 90780

Pharmacy Permit No. PHY 44224

and

**NGA TAN NGUYEN**

**a.k.a. NGA NGUYEN**

**a.k.a. JIMMY NGUYEN**

8121 California Avenue

South Gate, CA 90780

Pharmacist License No. RPH 43814

Respondent.

**DECISION AND ORDER**

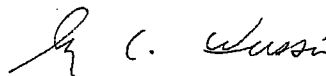
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on August 19, 2011.

It is so ORDERED July 20, 2011.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



\_\_\_\_\_  
STANLEY C. WEISSER  
Board President

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 SUSAN MELTON WILSON  
Deputy Attorney General  
4 State Bar No. 106902  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-4942  
6 Facsimile: (213) 897-2804  
E-mail: Susan.Wilson@doj.ca.gov  
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3335  
OAH No. 2010060406

12 **TOP CARE PHARMACY,**  
13 **NGA NGUYEN,**  
President and Pharmacist-In-Charge  
14 8121 California Avenue  
South Gate, CA 90780

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

15 Pharmacy Permit No. PHY 44224

16 **and**

17 **NGA TAN NGUYEN**  
18 **a.k.a. NGA NGUYEN**  
**a.k.a. JIMMY NGUYEN**  
19 8121 California Avenue  
South Gate, CA 90780

20 Pharmacist License No. RPH 43814

21  
22 Respondents.  
23

24 In the interest of a prompt and speedy settlement of this matter, consistent with the  
25 public interest and the responsibility of the Board of Pharmacy of the Department of Consumer  
26 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order  
27 which will be submitted to the Board for approval and adoption as the final disposition of this  
28 Accusation.



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1 Respondent has also carefully read, fully discussed with counsel, and understands the effects of  
2 this Stipulated Settlement and Disciplinary Order.

3 6. Respondent Top Care, by its authorized representative, is fully aware of its legal  
4 rights in this matter, including the right to a hearing on the charges and allegations in the  
5 Accusation; the right to be represented by counsel at its own expense; the right to confront and  
6 cross-examine the witnesses against them; the right to present evidence and to testify on its own  
7 behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the  
8 production of documents; the right to reconsideration and court review of an adverse decision;  
9 and all other rights accorded by the California Administrative Procedure Act and other applicable  
10 laws.

11 7. Respondent Top Care, by its authorized representative, voluntarily, knowingly, and  
12 intelligently waives and gives up each and every right set forth in paragraph 6 above.

13 8. Respondent Nga Tan Nguyen has carefully read, fully discussed with counsel, and  
14 understands the charges and allegations in Accusation No. 3335. Respondent has also carefully  
15 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and  
16 Disciplinary Order.

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

24 10. Respondent Nga Tan Nguyen voluntarily, knowingly, and intelligently waives and  
25 gives up each and every right set forth in paragraph 9 above.

#### 26 CULPABILITY

27 11. Respondent Top Care, by its authorized representative, admits the truth of each and  
28 every charge and allegation in Accusation No. 3335.

12. Respondent Top Care, by its authorized representative, agrees that its Pharmacy Permit is subject to discipline and agrees to be bound by the Board of Pharmacy's probationary terms as set forth in the Disciplinary Order below.

13. Respondent Nga Tan Nguyen admits the truth of each and every charge and allegation in Accusation No. 3335.

14. Respondent Nga Tan Nguyen agrees that his Pharmacy Permit is subject to discipline and agrees to be bound by the Board of Pharmacy's probationary terms as set forth in the Disciplinary Order below.

#### CIRCUMSTANCES IN MITIGATION

15. Respondents Top Care Pharmacy and Nga Tan Nguyen have never been the subject of any disciplinary action, and are admitting responsibility at an early stage in the proceedings. Respondents maintain that they did not act dishonestly, and did not knowingly aid or abet dishonest employee J.M.. Respondents have created and implemented a corrective plan of action that is extensive and designed to minimize risk of further incidents of employee theft. It appears at this time, that public safety will not be harmed by probationary licensure of these Respondents.

#### CONTINGENCY

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

///

///

17. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

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

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

**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 44224 issued to Top Care Pharmacy, a corporation doing business as Top Care Pharmacy, is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the terms and conditions set forth below.

IT IS FURTHER ORDERED that Pharmacist License No. RPH 43814 issued to Nga Tan Nguyen a.k.a. Nga Nguyen a.k.a. Jimmy Nguyen is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the terms and conditions set forth below.

**TERMS AND CONDITIONS FOR  
TOP CARE PHARMACY - PHARMACY PERMIT NO. PHY 44224  
ARE LISTED BELOW:**

**1. Obey All Laws - Pharmacy Permit No. PHY 44224**

Respondent Top Care Pharmacy ("owner") shall obey all state and federal laws and regulations.

Respondent owner shall report any of the following occurrences to the board, in

1 writing, within seventy-two (72) hours of such occurrence:

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

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

14 **2. Report to the Board - Pharmacy Permit No. PHY 44224**

15 Respondent owner shall report to the board quarterly, on a schedule as directed by the  
16 board or its designee. The report shall be made either in person or in writing, as directed. Among  
17 other requirements, respondent owner shall state in each report under penalty of perjury whether  
18 there has been compliance with all the terms and conditions of probation. Failure to submit  
19 timely reports in a form as directed shall be considered a violation of probation. Any period(s) of  
20 delinquency in submission of reports as directed may be added to the total period of probation.  
21 Moreover, if the final probation report is not made as directed, probation shall be automatically  
22 extended until such time as the final report is made and accepted by the board.  
23

24 **3. Interview with the Board - Pharmacy Permit No. PHY 44224**

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

4 **4. Cooperate with Board Staff - Pharmacy Permit No. PHY 44224**

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

8  
9 **5. Reimbursement of Board Costs-Pharmacy Permit No. PHY 44224**

10 Respondent Owner and Respondent Nga Tan Nguyen a.k.a. Nga Nguyen a.k.a.  
11 Jimmy Nguyen shall be jointly and severally liable for payment to the Board of its costs of  
12 investigation and prosecution in this matter, which are agreed to be Seven Thousand, Five  
13 Hundred Dollars (\$7,500.00). As a condition precedent to successful completion of probation,  
14 Respondent Owner shall pay costs of investigation and prosecution in accord with this agreement.

15 Respondent Owner and Respondent Nga Tan Nguyen a.k.a. Nga Nguyen a.k.a.  
16 Jimmy Nguyen shall jointly and severally make said payment as follows:

17 Respondents shall make twenty (20) monthly payments of Three Hundred and  
18 Seventy Five Dollars (\$375.00), by means of automatic withdrawal from Respondents'  
19 account(s), or as directed by the board or its designee, on or about the first day of each month,  
20 said payments commencing thirty (30) days after the effective date of the decision, and  
21 continuing for twenty (20) consecutive months thereafter. Respondents may pay the full  
22 remaining unpaid balance at any time.

23  
24  
25 There shall be no deviation from this schedule absent prior written approval by the  
26 board or its designee. It shall be Respondents' responsibility make these payments in a timely  
27 manner. Failure to pay costs by the deadline(s) as directed shall be considered a violation of  
28

1 probation.

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

4 **6. Probation Monitoring Costs - Pharmacy Permit No. PHY 44224**

5 Respondent owner shall pay any costs associated with probation monitoring as  
6 determined by the board each and every year of probation. Such costs shall be payable to the  
7 board on a schedule as directed by the board or its designee. Failure to pay such costs by the  
8 deadline(s) as directed shall be considered a violation of probation.  
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10 **7. Status of License - Pharmacy Permit No. PHY 44224**

11 Respondent owner shall, at all times while on probation, maintain current licensure  
12 with the board. If respondent owner submits an application to the board, and the application is  
13 approved, for a change of location, change of permit or change of ownership, the board shall  
14 retain continuing jurisdiction over the license, and the respondent shall remain on probation as  
15 determined by the board. Failure to maintain current licensure shall be considered a violation of  
16 probation.  
17

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

22 **8. License Surrender While on Probation - Pharmacy Permit No. PHY 44224**

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

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

6 Respondent owner shall also, by the effective date of this decision, arrange for the continuation of  
7 care for ongoing patients of the pharmacy by, at minimum, providing a written notice to ongoing  
8 patients that specifies the anticipated closing date of the pharmacy and that identifies one or more  
9 area pharmacies capable of taking up the patients' care, and by cooperating as may be necessary  
10 in the transfer of records or prescriptions for ongoing patients. Within five days of its provision  
11 to the pharmacy's ongoing patients, Respondent owner shall provide a copy of the written notice  
12 to the board. For the purposes of this provision, "ongoing patients" means those patients for  
13 whom the pharmacy has on file a prescription with one or more refills outstanding, or for whom  
14 the pharmacy has filled a prescription within the preceding sixty (60) days.

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

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

20 **9. Notice to Employees- Pharmacy Permit No. PHY 44224**

21 Respondent owner shall, upon or before the effective date of this decision, ensure that  
22 all employees involved in permit operations are made aware of all the terms and conditions of  
23 probation, either by posting a notice of the terms and conditions, circulating such notice, or both.  
24 If the notice required by this provision is posted, it shall be posted in a prominent place and shall  
25



1 remain posted throughout the probation period. Respondent owner shall ensure that any  
2 employees hired or used after the effective date of this decision are made aware of the terms and  
3 conditions of probation by posting a notice, circulating a notice, or both. Additionally,  
4 respondent owner shall submit written notification to the board, within fifteen (15) days of the  
5 effective date of this decision, that this term has been satisfied. Failure to submit such  
6 notification to the board shall be considered a violation of probation.

7 "Employees" as used in this provision includes all full-time, part-time, volunteer, temporary and  
8 relief employees and independent contractors employed or hired at any time during probation.  
9

10 **10. Owners and Officers: Knowledge of the Law - Pharmacy Permit**  
11 **No. PHY 44224**

12 Respondent shall provide, within thirty (30) days after the effective date of this  
13 decision, signed and dated statements from its owners, including any owner or holder of ten  
14 percent (10%) or more of the interest in respondent or respondent's stock, and any officer, stating  
15 under penalty of perjury that said individuals have read and are familiar with state and federal  
16 laws and regulations governing the practice of pharmacy. The failure to timely provide said  
17 statements under penalty of perjury shall be considered a violation of probation.  
18

19 **11. Posted Notice of Probation- Pharmacy Permit No. PHY 44224**

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

23 Respondent owner shall not, directly or indirectly, engage in any conduct or make  
24 any statement which is intended to mislead or is likely to have the effect of misleading any  
25 patient, customer, member of the public, or other person(s) as to the nature of and reason for the  
26 probation of the licensed entity.  
27

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

12. **Violation of Probation- Pharmacy Permit No. PHY 44224**

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

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

13. **Completion of Probation- Pharmacy Permit No. PHY 44224**

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

14. **Civil Administrative Penalty – Pharmacy Permit No. PHY 44224**

Respondent Top Care shall pay an administrative penalty of Ten Thousand Dollars (\$10,000.00). Respondent shall make payment of the assessed administrative penalty as follows.

Respondent shall make Twenty Five (25) monthly payments of Four Hundred Dollars (\$400.00), by means of automatic withdrawal from Respondent's account, or as directed by the board or its designee, on or about the first day of each month, said payments commencing thirty (30) days after the effective date of the decision, and continuing for twenty-five (25)

consecutive months thereafter. Respondent may pay the full remaining unpaid balance at any time.

There shall be no deviation from this schedule absent prior written approval by the board or its designee. It shall be Respondent's responsibility make these payments in a timely manner. Failure to make any payment when due shall be considered a violation of probation.

**15. Community Services Program-- Pharmacy Permit No. PHY 44224**

Within sixty (60) days of the effective date of this decision, Respondent Owner shall submit to the board or its designee, for prior approval, a community service program in which respondent shall provide free health-care related services to a community or charitable facility or agency for Fifty (50) Hours during the first year of probation.

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

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

**16. Separate File of Records**

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

**TERMS AND CONDITIONS FOR**  
**APPLICABLE TO NGA TAN NGUYEN**  
**PHARMACIST LICENSE NO. RPH 43814**  
**ARE LISTED BELOW:**

**17. Suspension- Pharmacist License No. RPH 43814**

As part of probation, Respondent is suspended from the practice of pharmacy for 60

(sixty) days beginning the effective date of this decision.

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

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

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

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

**18. Obey All Laws - Pharmacist License No. RPH 43814**

Respondent shall obey all state and federal laws and regulations.

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

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal

complaint, information or indictment

- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

**19. Report to the Board - Pharmacist License No. RPH 43814**

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

**20. Interview with the Board- Pharmacist License No. RPH 43814**

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

**21. Cooperate with Board Staff - Pharmacist License No. RPH 43814**

Respondent shall cooperate with the board's inspection program and with the board's

1 monitoring and investigation of respondent's compliance with the terms and conditions of his  
2 probation. Failure to cooperate shall be considered a violation of probation.

3 **22. Continuing Education- Pharmacist License No. RPH 43814**

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

6 **23. Notice to Employers- Pharmacist License No. RPH 43814**

7 During the period of probation, respondent shall notify all present and prospective  
8 employers of the decision in case number 3335 and the terms, conditions and restrictions imposed  
9 on respondent by the decision, as follows:  
10

11 Within thirty (30) days of the effective date of this decision, and within fifteen (15)  
12 days of respondent undertaking any new employment, respondent shall cause his direct  
13 supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during  
14 respondent's tenure of employment) and owner to report to the board in writing acknowledging  
15 that the listed individual(s) has/have read the decision in case number 3335, and terms and  
16 conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s)  
17 and/or supervisor(s) submit timely acknowledgment(s) to the board.  
18

19 If respondent works for or is employed by or through a pharmacy employment  
20 service, respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every  
21 entity licensed by the board of the terms and conditions of the decision in case number 3335 in  
22 advance of the respondent commencing work at each licensed entity. A record of this notification  
23 must be provided to the board upon request.  
24

25 Furthermore, within thirty (30) days of the effective date of this decision, and within  
26 fifteen (15) days of respondent undertaking any new employment by or through a pharmacy  
27 employment service, respondent shall cause his direct supervisor with the pharmacy employment  
28

1 service to report to the board in writing acknowledging that he has read the decision in case  
2 number 3335 and the terms and conditions imposed thereby. It shall be respondent's  
3 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely  
4 acknowledgment(s) to the board.

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

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

12  
13 **24: Reimbursement of Board Costs- Pharmacist License No. RPH 43814**

14 Respondent Nga Tan Nguyen and Respondent owner shall be jointly and severally  
15 liable for payment to the Board of board its costs of investigation and prosecution in this matter,  
16 which are agreed to be \$7,500.00 (Seven Thousand, Five Hundred Dollars). As a condition  
17 precedent to successful completion of probation, Respondent Nga Tan Nguyen a.k.a. Nga Nguyen  
18 a.k.a. Jimmy Nguyen shall pay costs of investigation and prosecution in accord with this  
19 agreement.  
20

21 Respondent Nga Tan Nguyen a.k.a. Nga Nguyen a.k.a. Jimmy Nguyen and  
22 Respondent owner shall jointly and severally make said payment as follows:

23 Respondents shall make twenty (20) monthly payments of Three Hundred and  
24 Seventy Five Dollars (\$375.00), by means of automatic withdrawal from Respondents'  
25 account(s), or as directed by the board or its designee, on or about the first day of each month,  
26 said payments commencing thirty (30) days after the effective date of the decision, and  
27  
28

1 continuing for twenty (20) consecutive months thereafter. Respondents may pay the full  
2 remaining unpaid balance at any time.

3 There shall be no deviation from this schedule absent prior written approval by the  
4 board or its designee. It shall be Respondents' responsibility make these payments in a timely  
5 manner. Failure to pay costs by the deadline(s) as directed shall be considered a violation of  
6 probation.

7 The filing of bankruptcy by Respondent shall not relieve respondent of their  
8 responsibility to reimburse the board its costs of investigation and prosecution.  
9

10 **25. Probation Monitoring Costs- Pharmacist License No. RPH 43814**

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

15 **26. Status of License- Pharmacist License No. RPH 43814**

16 Respondent shall, at all times while on probation, maintain an active, current license  
17 with the board, including any period during which suspension or probation is tolled. Failure to  
18 maintain an active, current license shall be considered a violation of probation.  
19

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

25 **27. License Surrender While on Probation/Suspension- Pharmacist License**  
26 **No. RPH 43814**

27 Following the effective date of this decision, should respondent cease practice due to  
28 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,



respondent may tender his license to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board. Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to the board within ten (10) days of notification by the board that the surrender is accepted. Respondent may not reapply for any license from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board, including any outstanding costs.

**28. Notification of a Change in Name, Residence Address, Mailing Address or Employment- Pharmacist License No. RPH 43814**

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

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

**29. Tolling of Probation- Pharmacist License No. RPH 43814**

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 40 (forty) hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must

1 nonetheless comply with all terms and conditions of probation.

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

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

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

15  
16  
17 **30. Violation of Probation- Pharmacist License No. RPH 43814**

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

23 If respondent violates probation in any respect, the board, after giving respondent  
24 notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order  
25 that was stayed. Notice and opportunity to be heard are not required for those provisions stating  
26 that a violation thereof may lead to automatic termination of the stay and/or revocation of the  
27  
28

1 license. If a petition to revoke probation or an accusation is filed against respondent during  
2 probation, the board shall have continuing jurisdiction and the period of probation shall be  
3 automatically extended until the petition to revoke probation or accusation is heard and decided.

4 **31. Completion of Probation- Pharmacist License No. RPH 43814**

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

7 **32. Community Services Program- Pharmacist License No. RPH 43814**

8 Within sixty (60) days of the effective date of this decision, respondent shall submit  
9 to the board or its designee, for prior approval, a community service program in which respondent  
10 shall provide free health-care related services on a regular basis to a community or charitable  
11 facility or agency for a total of Four Hundred (400) Hours; Eighty (80) hours of community  
12 service per year for every year of probation. Within thirty (30) days of board approval thereof,  
13 respondent shall submit documentation to the board demonstrating commencement of the  
14 community service program. A record of this notification must be provided to the board upon  
15 request. Respondent shall report on progress with the community service program in the  
16 quarterly reports. Failure to timely submit, commence, or comply with the program shall be  
17 considered a violation of probation.  
18

19 **33. Remedial Education- Pharmacist License No. RPH 43814**

20 Within Ninety (90) days of the effective date of this decision, respondent shall submit  
21 to the board or its designee, for prior approval, an appropriate program of remedial education  
22 related to pharmacy security. The program of remedial education shall consist of at least thirty-  
23 seven (37) hours, which shall be completed during the first three years of probation at  
24 Respondent's own expense. All remedial education shall be in addition to, and shall not be  
25 credited toward, continuing education (CE) courses used for license renewal purposes.  
26  
27  
28

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

5 Following the completion of each course, the board or its designee may require the  
6 respondent, at his own expense, to take an approved examination to test the respondent's  
7 knowledge of the course. If the respondent does not achieve a passing score on the examination,  
8 this failure shall be considered a violation of probation. Any such examination failure shall  
9 require respondent to take another course approved by the board in the same subject area.  
10

11 **34. No New Ownership of Licensed Premises- Pharmacist License No. RPH**  
12 **43814**

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

23 **35. Report of Controlled Substances - Pharmacist License No. RPH 43814**

24 Respondent shall prepare quarterly reports to the board detailing the total acquisition  
25 and disposition of such controlled substances as the board may direct. Respondent shall specify  
26 the manner of disposition (e.g., by prescription, due to burglary, etc.) or acquisition (e.g., from a  
27 manufacturer, from another retailer, etc.) of such controlled substances. Failure to timely prepare  
28

1 such reports, or present such reports for inspection as directed by the board or its designee, shall  
2 be considered a violation of probation.

3 **36. Consultant for Owner or Pharmacist-In-Charge- Pharmacist License No.**  
4 **RPH 43814**

5 During the period of probation, respondent shall not supervise any intern pharmacist,  
6 or serve as a consultant to any entity licensed by the board. In the event that the respondent is  
7 currently the pharmacist-in-charge of a pharmacy, the pharmacy shall retain an independent  
8 consultant at its own expense who shall be responsible for reviewing pharmacy operations on a  
9 monthly basis for the first year of probation, compliance by respondent with state and federal  
10 laws and regulations governing the practice of pharmacy and for compliance by respondent with  
11 the obligations of a pharmacist-in-charge.  
12

13 After the first year of probation, so long as Respondent is fully compliant with all  
14 terms of probation, the board or its designee shall permit the review of pharmacy operations by a  
15 consultant on a quarterly basis.

16 After three years of probation, so long as Respondent is fully compliant with all terms  
17 of probation, the board or its designee shall consider modification of this requirement to cease all  
18 review of pharmacy operations by a consultant.  
19

20 The consultant shall be a pharmacist licensed by and not on probation with the board  
21 and whose name shall be submitted to the board or its designee, for prior approval. Within thirty  
22 (30) days of the effective date of this decision. Respondent shall not be a pharmacist-in-charge at  
23 more than one pharmacy or at any pharmacy of which he is not the current pharmacist-in-charge.  
24 The board may, in case of an employment change by respondent or for other reasons as deemed  
25 appropriate by the board or its designee, preclude the respondent from acting as a pharmacist-in-  
26 charge. Failure to timely retain, seek approval of, or ensure timely reporting by the consultant  
27 shall be considered a violation of probation.  
28

///

**37. Tolling of Suspension- Pharmacist License No. RPH 43814**


During the period of suspension, respondent shall not leave California for any period exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess of the (10) days during suspension shall be considered a violation of probation. Moreover, any absence from California during the period of suspension exceeding ten (10) days shall toll the suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days respondent is absent from California. During any such period of tolling of suspension, respondent must nonetheless comply with all terms and conditions of probation.

Respondent must notify the board in writing within ten (10) days of departure, and must further notify the board in writing within ten (10) days of return. The failure to provide such notification(s) shall constitute a violation of probation. Upon such departure and return, respondent shall not resume the practice of pharmacy until notified by the board that the period of suspension has been satisfactorily completed.

**ACCEPTANCE**


I, Nga Tan Nguyen a.k.a. Nga Nguyen a.k.a. Jimmy Nguyen, am the authorized representative of Top Care Pharmacy, a corporation, and have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with attorney Norman A. Mathews. I/we understand the stipulation and the effect it will have on Pharmacy Permit No. PHY 44224. On behalf of Top Care Pharmacy, a corporation, I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 11/05/2010

  
\_\_\_\_\_  
NGA TAN NGUYEN a.k.a. NGA NGUYEN a.k.a.  
JIMMY NGUYEN  
PRESIDENT  
TOP CARE PHARMACY  
Respondent

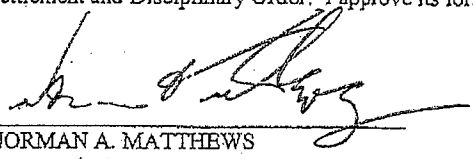
1 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
2 discussed it with my attorney, Norman A. Mathews. I understand the stipulation and the effect it  
3 will have on my Pharmacy Permit. I enter into this Stipulated Settlement and Disciplinary Order  
4 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the  
5 Board of Pharmacy.

6 DATED: 11/05/2010

  
7 NGA TAN NGUYEN a.k.a. NGA NGUYEN a.k.a.  
8 JIMMY NGUYEN  
9 Respondent

10 I have read and fully discussed with Nga Tan Nguyen all terms and conditions and other  
11 matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form  
12 and content.

13 DATED: 11/06/10

  
14 NORMAN A. MATTHEWS  
15 Attorney for Respondent


16  
17 ENDORSEMENT

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

20  
21 DATED: 12-22-10

Respectfully Submitted,

22 EDMUND G. BROWN JR.  
23 Attorney General of California  
24 GREGORY J. SALUTE  
25 Supervising Deputy Attorney General

  
26 SUSAN MELTON WILSON  
27 Deputy Attorney General  
28 Attorneys for Complainant

**Exhibit A**

**Accusation No. 3335**



1 EDMUND G. BROWN JR.  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 SUSAN MELTON WILSON  
Deputy Attorney General  
4 State Bar No. 106902  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-4942  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
7

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

10 In the Matter of the Accusation Against:

Case No. 3335

11 **TOP CARE PHARMACY,**  
NGA NGUYEN,  
12 President and Pharmacist-In-Charge  
8121 California Avenue  
13 South Gate, CA 90780

**A C C U S A T I O N**

14 Pharmacy Permit No. PHY 44224

15 **and**

16 **NGA TAN NGUYEN**  
**a.k.a. NGA NGUYEN**  
17 **a.k.a. JIMMY NGUYEN**  
8121 California Avenue  
18 South Gate, CA 90780

19 Pharmacist License No. RPH 43814

20 Respondents.  
21

22 Complainant alleges:

23 **PARTIES**

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

26 2. On or about July 9, 1999, the Board of Pharmacy (Board) issued Pharmacy Permit  
27 No. PHY 44224 to Top Care Pharmacy and Nga Tan Nguyen a.k.a. Nga Nguyen a.k.a. Jimmy  
28 Nguyen, President (Respondent Pharmacy). Nga Tan Nguyen is and has been the Pharmacist-In-

1 Charge since August 9, 2004. The Pharmacy Permit was in full force and effect at all times  
2 relevant to the charges brought herein and will expire on July 1, 2010, unless renewed.

3 3. On or about August 14, 1990, the Board issued Pharmacist License No. RPH 43814  
4 to Nga Tan Nguyen a.k.a. Nga Nguyen a.k.a. Jimmy Nguyen (Respondent Nguyen). The  
5 Pharmacist License was in full force and effect at all times relevant to the charges brought herein  
6 and will expire on July 31, 2010, unless renewed.

### 7 JURISDICTION

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

### 11 STATUTORY PROVISIONS

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

16 6. Section 4005 states:

17 “(a) The board may adopt rules and regulations, not inconsistent with the laws of this  
18 state, as may be necessary for the protection of the public. Included therein shall be the right to  
19 adopt rules and regulations as follows: for the proper and more effective enforcement and  
20 administration of this chapter; pertaining to the practice of pharmacy; relating to the sanitation of  
21 persons and establishments licensed under this chapter; pertaining to establishments wherein any  
22 drug or device is compounded, prepared, furnished, or dispensed; providing for standards of  
23 minimum equipment for establishments licensed under this chapter; pertaining to the sale of drugs  
24 by or through any mechanical device; and relating to pharmacy practice experience necessary for  
25 licensure as a pharmacist.

26 (b) Notwithstanding any provision of this chapter to the contrary, the board may  
27 adopt regulations permitting the dispensing of drugs or devices in emergency situations, and  
28 permitting dispensing of drugs or devices pursuant to a prescription of a person licensed to

1 prescribe in a state other than California where the person, if licensed in California in the same  
2 licensure classification would, under California law, be permitted to prescribe drugs or devices  
3 and where the pharmacist has first interviewed the patient to determine the authenticity of the  
4 prescription.

5 (c) The adoption, amendment, or repeal by the board of these or any other board rules  
6 or regulations shall be in accordance with Chapter 3.5 (commencing with Section 11340) of Part  
7 1 of Division 3 of Title 2 of the Government Code.

8 7. Section 4081 states:

9 "(a) All records of manufacture and of sale, acquisition, or disposition of  
10 dangerous drugs or dangerous devices shall be at all times during business hours open to  
11 inspection by authorized officers of the law, and shall be preserved for at least three years from  
12 the date of making. A current inventory shall be kept by every manufacturer, wholesaler,  
13 pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian,  
14 laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked  
15 certificate, license, permit, registration, or exemption under Division 2 (commencing with Section  
16 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of  
17 Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or  
18 dangerous devices.

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

22 "(c) The pharmacist-in-charge or representative-in-charge shall not be  
23 criminally responsible for acts of the owner, officer, partner, or employee that violate this section  
24 and of which the pharmacist-in-charge or representative-in-charge had no knowledge, or in  
25 which he or she did not knowingly participate."

26 8. Section 4115, subdivision (h), states that "[t]he pharmacist on duty shall be directly  
27 responsible for the conduct of a pharmacy technician supervised by that pharmacist."  
28

1           9.     Section 4300 states, in pertinent part, that "[e]very license issued may be suspended  
2 or revoked."

3           10.    Section 4301 states, in pertinent part:

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

8                .....

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

11               .....

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

16                               **REGULATORY PROVISIONS**

17           11.    California Code of Regulations, title 16, section 1714 states, in pertinent part:

18                "(b)       Each pharmacy licensed by the board shall maintain its facilities, space,  
19 fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and  
20 distributed. The pharmacy shall be of sufficient size and unobstructed area to accommodate the  
21 safe practice of pharmacy.

22                ...

23                "(d)       Each pharmacist while on duty shall be responsible for the security of the  
24 prescription department, including provisions for effective control against theft or diversion of  
25 dangerous drugs and devices, and records for such drugs and devices. Possession of a key to the  
26 pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a  
27 pharmacist."

28                ///

12. California Code of Regulations, title 16, section 1718, states:

"Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

"The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory."

### COST RECOVERY

13. Section 125.3 provides that the Board may request the administrative law judge to direct a licensee 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 SUBSTANCES / DANGEROUS DRUGS

14. "Norco - is the brand name for a pain medication combining narcotic hydrocodone with non-narcotic acetaminophen and is classified as a Schedule III narcotic substance pursuant to Health and Safety Code section 11056(e)(4) and a dangerous drug pursuant to Business and Professions Code section 4022.

15. Vicodin - is a trade name for a medication combining Hydrocodone, a narcotic pain medication, and Acetaminophen (e.g. Tylenol) a non-narcotic pain medication. It is a Schedule III controlled substance pursuant to Health and Safety Code section 11056(e)(4), and is a dangerous drug within the meaning of Business and Professions Code section 4022.

16. Vicodin ES - is a trade name for an extra strength version of Vicodin (described above) which includes increased amounts of Hydrocodone and Acetaminophen.

### SUMMARY OF FACTS

17. The following facts are common to all charges of the Accusation:

a. On or about June 21, 2007, Respondents filed a "Report of Theft or Loss of Controlled Substances" ("Report") with the Board, in which they reported significant losses of drug stock which were attributed to theft by a former employee, pharmacy technician J.M. Mendoza (JMM), who was criminally prosecuted and convicted of violating Penal Code section 487(a) (Grand Theft) for said theft.

b. In the Report, Respondents indicated that on June 6, 2007, Respondent TOP CARE PHARMACY discovered a loss of 5,000 tablets of Norco and 1,000 tablets of Vicodin ES. On or about that date, JMM admitted that he made and received delivery of unauthorized orders of drug stocks, which he disposed of in an unspecified manner.

c. Prior to June 6, 2007, Respondents paid for some of JMM's unauthorized orders, having failed to notice unauthorized entries on pharmacy invoices. JMM may have stolen or destroyed some purchase invoices to conceal diversion and theft.

d. Commencing on June 21, 2007, a selected drug audit was performed by Board inspectors. The drugs chosen for the audit were Vicodin, Vicodin ES and Norco. The audit period was from July 10, 2005 through June 21, 2007. The audit revealed shortages as follows:

DRUG	7/10/2005 INVENTORY AMOUNT	PURCHASED AMOUNT	DISPENSED AMOUNT	6/21/2007 INVENTORY AMOUNT	AMOUNT SHORT
Norco	124	198,100	4,470	155	193,599 (98 %)
Vicodin	3,353	63,300	63,892	2,308	453 (1%)
Vicodin ES	458	144,700	32,029	296	112,833 (78%)

#### **FIRST CAUSE FOR DISCIPLINE**

##### **(Failure to Maintain Complete and Accurate Records)**

17. Respondents TOP CARE PHARMACY and NGA TAN NGUYEN are subject to disciplinary action under section 4300 for unprofessional conduct as defined in section 4301, subdivisions (j) and (o), in conjunction with section 4081 and California Code of Regulations, title 16, section 1718 for failure to maintain a complete and accurate record for all controlled substances/dangerous drugs received, sold, or otherwise disposed of by them. As described in paragraph 17 above, Respondents were unable to account for all controlled substances and dangerous drugs, per a selected drug audit performed by Board inspectors. The audit period was between July 10, 2005 and June 21, 2007, and revealed that 193,599 tablets of Norco, 453 tablets

1 of Vicodin, and 112,833 tablets of Vicodin ES had been ordered and received but were not in  
2 stock and unaccounted for.

### 3 SECOND CAUSE FOR DISCIPLINE

#### 4 **(Failure to Maintain Complete Acquisition/Disposition Records)**

5 18. Respondents TOP CARE PHARMACY and NGA TAN NGUYEN are subject to  
6 disciplinary action under section 4300 for unprofessional conduct as defined in section 4301,  
7 subdivisions (j) and (o), in conjunction with section 4081, subdivision (a), for failure to maintain  
8 all records of acquisition and disposition for three (3) years from date of making and to keep a  
9 current inventory of dangerous drugs. While Respondents' employee may have stolen or  
10 destroyed purchase invoices to conceal diversion and theft, neither the missing invoices, nor the  
11 large volume of controlled substances ordered and delivered to the pharmacy but missing from  
12 stock – were discovered for almost two years, as described in paragraph 17 above.

### 13 THIRD CAUSE FOR DISCIPLINE

#### 14 **(Failure to Maintain Security of Pharmacy)**

15 19. Respondents TOP CARE PHARMACY and NGA TAN NGUYEN are subject to  
16 disciplinary action under section 4300 for unprofessional conduct as defined in section 4301,  
17 subdivisions (o), in conjunction with section 4005, section 4115 subdivision (h) and California  
18 Code of Regulations, title 16, section 1714, subdivision (b), for failing to maintain its facilities,  
19 space, fixtures, and equipment so that drugs are safely and properly prepared, maintained,  
20 secured. Respondents failed to secure and maintain its facilities from unauthorized employees  
21 ordering controlled substances, stealing or destroying controlled substance acquisition invoices,  
22 and unlawfully distributing controlled substances, as described in paragraph 17 above.

### 23 FOURTH CAUSE FOR DISCIPLINE

#### 24 **(Failure to Maintain Security of Controlled Substances)**

25 20. Respondent NGA TAN NGUYEN is subject to disciplinary action under section 4300  
26 for unprofessional conduct as defined in section 4301, subdivisions (o), in conjunction with  
27 section 4005, section 4115 subdivision (h) and California Code of Regulations, title 16, section  
28 1714, subdivision (d), for failing to secure the prescription department and provide effective

controls to prevent theft or diversion of 193,599 Norco, 453 Vicodin and 112,833 Vicodin ES, controlled substances and dangerous drugs, and maintain records for such drugs, as described in paragraphs 17 – 19, above.

PRAYER

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

1. Revoking or suspending Pharmacy Permit No. PHY 44224, issued to Top Care Pharmacy;
2. Revoking or suspending Pharmacist License No. RPH 43814, issued to Nga Tan Nguyen;
3. Ordering Top Care Pharmacy and Nga Tan Nguyen to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
4. Taking such other and further action as deemed necessary and proper.

DATED: 9/25/09

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

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