

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

In the Matter of the Accusation Against:

**TOP DRUGS PHARMACY, INC., dba
TOP DRUGS PHARMACY;
TOM THUY PHUNG, CEO, CFO, PRES, DIR, SEC, TREAS;
HAIDUONG NGO, VP, DIR,
Pharmacy Permit No. PHY 55878;**

**HAIDUONG NGO,
Pharmacist License No. RPH 54675;**

and

**TOM THUY PHUNG,
Pharmacist License No. 52739**

Respondents.

Agency Case No. 7025

OAH No. 2021061004

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 April 21, 2022.

It is so ORDERED on March 22, 2022.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is fluid and cursive, with the first name "Seung" and last name "Oh" clearly visible, and "W." in the middle.

Seung W. Oh, Pharm.D.
Board President

1 ROB BONTA
Attorney General of California
2 CARL M. SONNE
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3 ERIN M. SUNSERI
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Attorneys for Complainant

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

13 In the Matter of the Accusation Against:

Case No. 7025

14 **TOP DRUGS PHARMACY, INC.,**
15 **DBA TOP DRUGS PHARMACY;**
16 **TOM THUY PHUNG, CEO, CFO, PRES,**
17 **DIR, SEC, TREAS;**
18 **HAIDUONG NGO, VP, DIR**
19 **11010 Magnolia St.,**
20 **Garden Grove, CA 92841**

OAH No. 2021061004

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
HAIDUONG NGO, ONLY

21 **Pharmacy Permit Number No. PHY 55878,**

22 **HAIDUONG NGO**
23 **19652 Waterbury Ln.,**
24 **Huntington Beach, CA 92646**

25 **Pharmacist License No. RPH 54675,**

26 **and**

27 **TOM THUY PHUNG**
28 **19652 Waterbury Ln.,**
Huntington Beach, CA 92646

Pharmacist License No. RPH 52739

Respondents.

1 IT IS HEREBY STIPULATED AND AGREED by and between parties Complainant Anne
2 Sodergren and Respondent Haiduong Ngo to the above-entitled proceedings that the following
3 matters are true:

4 **PARTIES**

5 1. Anne Sodergren (Complainant) is the Executive Officer of the Board of Pharmacy
6 (Board). She brought this action solely in her official capacity and is represented in this matter by
7 Rob Bonta, Attorney General of the State of California, by Erin M. Sunseri, Supervising Deputy
8 Attorney General.

9 2. Respondent is represented in this proceeding by Adam B. Brown of the Law Offices
10 of Brown & Brown, 3848 Carson Street, Suite 206, Torrance, California 90503.

11 3. On or about August 21, 2003, the Board of Pharmacy issued Pharmacist License
12 Number RPH 54675 to Haiduong Ngo (Respondent). The Pharmacist License was in full force
13 and effect at all times relevant to the charges brought herein and will expire on February 28,
14 2023, unless renewed.

15 **JURISDICTION**

16 4. Accusation No. 7025 was filed before the Board, and is currently pending against
17 Respondent. The Accusation and all other statutorily required documents were properly served
18 on Respondent on February 1, 2021. Respondent timely filed her Notice of Defense contesting
19 the Accusation.

20 5. A copy of Accusation No. 7025 is attached as Exhibit A and incorporated herein by
21 reference.

22 **ADVISEMENT AND WAIVERS**

23 6. Respondent has carefully read, fully discussed with counsel, and understands the
24 charges and allegations in Accusation No. 7025. Respondent has also carefully read, fully
25 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
26 Order.

27 7. Respondent is fully aware of her legal rights in this matter, including the right to a
28 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine

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

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

7 **CULPABILITY**

8 9. Respondent understands and agrees that the charges and allegations in Accusation
9 No. 7025, if proven at a hearing, constitute cause for imposing discipline upon her Pharmacist
10 License.

11 10. For the purpose of resolving the Accusation without the expense and uncertainty of
12 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
13 basis for the charges in the Accusation, and that Respondent hereby gives up her right to contest
14 those charges.

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

17 **CONTINGENCY**

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

13. 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.

14. 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.

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 Pharmacist License No. RPH 54675 issued to Respondent Haiduong Ngo is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) 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.

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.

3. Interview with the Board

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.

4. Cooperate with Board Staff

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

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1 **5. Continuing Education**

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

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

5 During the period of probation, Respondent shall notify all present and prospective
6 employers of the decision in case number 7025 and the terms, conditions and restrictions imposed
7 on respondent by the decision, as follows:

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

19 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
20 Respondent undertaking any new employment, Respondent shall cause (a) her direct supervisor,
21 (b) her pharmacist-in-charge, designated representative-in-charge, responsible manager, or other
22 compliance supervisor, and (c) the owner or owner representative of her employer, to report to the
23 board in writing acknowledging that the listed individual(s) has/have read the decision in case
24 number 7025, and terms and conditions imposed thereby. If one person serves in more than one
25 role described in (a), (b), or (c), the acknowledgment shall so state. It shall be Respondent's
26 responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the
27 event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term
28 of probation, Respondent shall cause the person(s) taking over the role(s) to report to the board in

1 writing within fifteen (15) days of the change acknowledging that he or she has read the decision
2 in case number 7025, and the terms and conditions imposed thereby.

3 If Respondent works for or is employed by or through an employment service, Respondent
4 must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board
5 of the decision in case number 7025, and the terms and conditions imposed thereby in advance of
6 respondent commencing work at such licensed entity. A record of this notification must be
7 provided to the board upon request.

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

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

17 "Employment" within the meaning of this provision includes any full-time, part-time,
18 temporary, relief, or employment/management service position as a pharmacist, or any position
19 for which a pharmacist is a requirement or criterion for employment, whether Respondent is an
20 employee, independent contractor or volunteer.

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

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

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

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

27 During the period of probation, Respondent shall not supervise any intern pharmacist, be
28 the pharmacist-in-charge, designated representative-in-charge, responsible manager or other

1 compliance supervisor of any entity licensed by the board, nor serve as a consultant. Assumption
2 of any such unauthorized supervision responsibilities shall be considered a violation of probation.

3 **9. Reimbursement of Board Costs**

4 As a condition precedent to successful completion of probation, Respondent shall pay to the
5 board its costs of investigation and prosecution in the amount of \$15,000.00 and shall be jointly
6 and severally liable for those costs with Respondents Tom Thuy Phung and Top Drugs Pharmacy,
7 Inc., dba Top Drugs Pharmacy. Respondent shall be permitted to pay these costs in a payment
8 plan approved by the board or its designee, so long as full payment is completed no later than one
9 (1) year prior to the end date of probation. There shall be no deviation from this schedule absent
10 prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as
11 directed shall be considered a violation of probation.

12 **10. Probation Monitoring Costs**

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

17 **11. Status of License**

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

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

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

2 Following the effective date of this decision, should Respondent cease practice due to
3 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
4 Respondent may relinquish her license, including any indicia of licensure issued by the board,
5 along with a request to surrender the license. The board or its designee shall have the discretion
6 whether to accept the surrender or take any other action it deems appropriate and reasonable.
7 Upon formal acceptance of the surrender of the license, Respondent will no longer be subject to
8 the terms and conditions of probation. This surrender constitutes a record of discipline and shall
9 become a part of Respondent's license history with the board.

10 Upon acceptance of the surrender, Respondent shall relinquish her pocket and/or wall
11 license, including any indicia of licensure not previously provided to the board within ten (10)
12 days of notification by the board that the surrender is accepted if not already provided.
13 Respondent may not reapply for any license from the board for three (3) years from the effective
14 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
15 of the date the application for that license is submitted to the board, including any outstanding
16 costs.

17 **13. Practice Requirement – Extension of Probation**

18 Except during periods of suspension, Respondent shall, at all times while on probation, be
19 employed as a pharmacist in California for a minimum of 120 hours per calendar month. Any
20 month during which this minimum is not met shall extend the period of probation by one month.
21 During any such period of insufficient employment, Respondent must nonetheless comply with
22 all terms and conditions of probation, unless Respondent receives a waiver in writing from the
23 board or its designee.

24 If Respondent does not practice as a pharmacist in California for the minimum number of
25 hours in any calendar month, for any reason (including vacation), Respondent shall notify the
26 board in writing within ten (10) days of the conclusion of that calendar month. This notification
27 shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the
28 interruption or reduction in practice; and the anticipated date(s) on which Respondent will resume

1 practice at the required level. Respondent shall further notify the board in writing within ten (10)
2 days following the next calendar month during which respondent practices as a pharmacist in
3 California for the minimum of hours. Any failure to timely provide such notification(s) shall be
4 considered a violation of probation.

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

9 14. Violation of Probation

10 If Respondent has not complied with any term or condition of probation, the board shall
11 have continuing jurisdiction over Respondent, and the board shall provide notice to Respondent
12 that probation shall automatically be extended, until all terms and conditions have been satisfied
13 or the board has taken other action as deemed appropriate to treat the failure to comply as a
14 violation of probation, to terminate probation, and to impose the penalty that was stayed. The
15 board or its designee may post a notice of the extended probation period on its website.

16 If Respondent violates probation in any respect, the board, after giving Respondent notice
17 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
18 was stayed. If a petition to revoke probation or an accusation is filed against Respondent during
19 probation, or the preparation of an accusation or petition to revoke probation is requested from
20 the Office of the Attorney General, the board shall have continuing jurisdiction and the period of
21 probation shall be automatically extended until the petition to revoke probation or accusation is
22 heard and decided, and the charges and allegations in Accusation No. 7025 shall be deemed true
23 and correct.

24 15. Completion of Probation

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

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1 **16. Remedial Education**

2 Within thirty (30) days of the effective date of this decision, Respondent shall submit to the
3 board or its designee, for prior approval, an appropriate program of remedial education related to
4 corresponding responsibility. The program of remedial education shall consist of at least ten
5 hours completed each year of probation. All remedial education shall be in addition to, and shall
6 not be credited toward, continuing education (CE) courses used for license renewal purposes for
7 pharmacists.

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

12 Following the completion of each course, the board or its designee may require
13 Respondent, at her own expense, to take an approved examination to test Respondent's
14 knowledge of the course. If Respondent does not achieve a passing score on the examination that
15 course shall not count towards satisfaction of this term. Respondent shall take another course
16 approved by the board in the same subject area.

17 **17. Board's One-Day Training Program**

18 Within the first year of probation, Respondent shall enroll in the Board's one-day, six (6)
19 hour training program, "Preventing Prescription Drug Abuse and Drug Diversion," at
20 Respondent's expense. Respondent shall provide proof of enrollment upon request. Within thirty
21 (30) days of completion, Respondent shall submit a copy of the certificate of completion to the
22 Board or its designee. Failure to timely enroll in the training program, to initiate the training
23 program during the first year of probation, to successfully complete it before the second year of
24 probation, or to timely submit proof of completion to the Board or its designee, shall be
25 considered a violation of probation.

26 **18. Ethics Course**

27 Within sixty (60) calendar days of the effective date of this decision, Respondent shall
28 enroll in a course in ethics, at Respondent's expense, approved in advance by the board or its

designee that complies with Title 16 California Code of Regulations section 1773.5. Respondent shall provide proof of enrollment upon request. Within five (5) days of completion, Respondent shall submit a copy of the certificate of completion to the board or its designee. Failure to timely enroll in an approved ethics course, to initiate the course during the first year of probation, to successfully complete it before the end of the second year of probation, or to timely submit proof of completion to the board or its designee, shall be considered a violation of probation.

19. Supervised Practice

Within thirty (30) days of the effective date of this decision, Respondent shall submit to the board or its designee, for prior approval, the name of a pharmacist by and not on probation with the board, to serve as Respondent's practice supervisor. As part of the documentation submitted, Respondent shall cause the proposed practice supervisor to report to the board in writing acknowledging that he or she has read the decision in case number 7025, and is familiar with the terms and conditions imposed thereby, including the level of supervision required by the board or its designee. This level will be determined by the board or its designee, will be communicated to Respondent on or before the effective date of this decision and shall be one of the following:

Continuous – At least 75% of a work week

Substantial - At least 50% of a work week

Partial - At least 25% of a work week

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

Respondent may practice only under the required level of supervision by an approved practice supervisor. If, for any reason, including change of employment, Respondent is no longer supervised at the required level by an approved practice supervisor, within ten (10) days of this change in supervision Respondent shall submit to the board or its designee, for prior approval, the name of a pharmacist by and not on probation with the board, to serve as Respondent's replacement practice supervisor. As part of the documentation submitted, Respondent shall cause the proposed replacement practice supervisor to report to the board in writing acknowledging that he or she has read the decision in case number 7025, and is familiar with the terms and conditions imposed thereby, including the level of supervision required.

Any of the following shall result in the automatic suspension of practice by Respondent and shall be considered a violation of probation:

Failure to nominate an initial practice supervisor, and to have that practice supervisor report to the board in writing acknowledging the decision, terms and conditions, and supervision level, within thirty (30) days;

Failure to nominate a replacement practice supervisor, and to have that practice supervisor report to the board in writing acknowledging the decision, terms and conditions, and supervision level, within ten (10) days;

Practicing in the absence of an approved practice supervisor beyond the initial or replacement nomination period; or

Any failure to adhere to the required level of supervision.

Respondent shall not resume practice until notified in writing by the board or its designee.

During any suspension, Respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or any area where dangerous drugs and/or dangerous 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, distributing, manufacturing or dispensing of dangerous drugs and/or dangerous devices or controlled substances.

During any suspension, Respondent shall not engage in any activity that requires the professional judgment and/or licensure as a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy or of the manufacture, distribution, wholesaling, or retailing of dangerous drugs and/or dangerous devices or controlled substances.

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

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ENDORSEMENT

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

DATED: _____

Respectfully submitted,

ROB BONTA
Attorney General of California
CARL M. SONNE
Senior Assistant Attorney General

ERIN M. SUNSERI
Supervising Deputy Attorney General
Attorneys for Complainant

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ENDORSEMENT

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

DATED: 12/30/21

Respectfully submitted,

ROB BONTA
Attorney General of California
CARL M. SONNE
Senior Assistant Attorney General


ERIN M. SUNSERI
Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 7025

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Attorneys for Complainant

**BEFORE THE
BOARD OF PHARMACY
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11010 Magnolia St.,
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ACCUSATION

Pharmacy Permit Number No. PHY 55878,

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and

**TOM THUY PHUNG
19652 Waterbury Ln.,
Huntington Beach, CA 92646**

Pharmacist License No. RPH 52739

Respondents.

1 **PARTIES**

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

4 2. On or about August 21, 2003, the Board of Pharmacy issued Pharmacy Permit
5 Number PHY 55878 to Top drugs Pharmacy, Inc., dba Top Drugs Pharmacy (Respondent Top
6 Drugs Pharmacy). The Pharmacy Permit was in full force and effect at all times relevant to the
7 charges brought herein and will expire on January 1, 2022, unless renewed.

8 3. On or about January 21, 2003, the Board of Pharmacy issued Pharmacist License
9 Number RPH 54675 to Haiduong Ngo (Respondent Ngo). The Pharmacist License was in full
10 force and effect at all times relevant to the charges brought herein and will expire on February 28,
11 2021, unless renewed.

12 4. On or about September 4, 2001, the Board of Pharmacy issued Pharmacist License
13 Number RPH 52739 to Tom Thuy Phung (Respondent Phung). The Pharmacist License was in
14 full force and effect at all times relevant to the charges brought herein and will expire on February
15 28, 2021, unless renewed.

16 **JURISDICTION**

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

20 6. Section 4011 of the Code provides that the Board shall administer and enforce both
21 the Pharmacy Law (Bus. & Prof. Code, § 11000 *et seq.*).

22 7. Code section 4300, subdivision (a), provides that every license issued by the Board
23 may be suspended or revoked.

24 8. Code section 4300.1 states:

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

STATUTORY PROVISIONS

9. Code section 4022 states:

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

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

(b) Any device that bears the statement: “Caution: federal law restricts this device to 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.

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

10. Code section 4113, subdivision (c) states:

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

11. Code section 4301 states in pertinent part:

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

...

(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, or any other state, or of the United States regulating controlled substances and dangerous drugs.

...

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

...

12. Code section 4306.5, subdivisions (a) and (b) states:

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

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

(b) Acts or omissions that involve, in whole or in part, the failure to exercise or 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.

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

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

13. Code section 4307, subdivision (a) states:

Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner member, officer, director, associate, or partner of any partnership, corporation, 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 manger, administrator, owner, member, officer, director, associate, or partner had knowledge 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 manger, administrator, owner, member, officer, director, associate, or partner 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.

14. Health and Safety Code section 11153, subdivision (a), states:

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

1 habitual user of controlled substances, which is issued not in the course of
2 professional treatment or as part of an authorized narcotic treatment program, for the
3 purpose of providing the user with controlled substances, sufficient to keep him or her
4 comfortable by maintaining customary use.

5 **REGULATORY PROVISIONS**

6 15. Code of Federal Regulations, Title 21, section 1306.04, subdivision (a), states:

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

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

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

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

27 **COST RECOVERY**

28 17. Section 125.3 of the Code provides, 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

18 18. Xanax is the brand name for alprazolam, a Schedule IV controlled substance pursuant
19 to Health and Safety Code section 11057, subdivision (d)(1), and is a dangerous drug as defined
20 by Business and Professions Code section 4022.

19. Adderall is the brand name for amphetamine salts, a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (d)(1) and a dangerous drug as defined by Business and Professions Code section 4022.

20. Norco/Lortab is the brand name for hydrocodone/acetaminophen (APAP), a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (I)(i), and Title 21 CFR 1308.12 and a dangerous drug as defined by Business and Professions Code section 4022.

21. Percolone/Roxicodone is the brand name for oxycodone, a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(M) and a dangerous drug as defined by Business and Professions Code section 4022.

22. Phenergan with Codeine Syrup is the brand name for promethazine/codeine syrup, a Schedule V controlled substance pursuant to Health and Safety Code section 11058, subdivision (c)(1) and a dangerous drug as defined by Business and Professions Code section 4022.

FACTUAL ALLEGATIONS

23. At all relevant times, Respondent Top Drugs Pharmacy was an independent community pharmacy located in Garden Grove, California. At all relevant times, Respondent Ngo was the Pharmacist-in-Charge and owner of 25% of Respondent Top Drugs Pharmacy, and Respondent Phung was the owner of 75% of Respondent Top Drugs Pharmacy.

24. On or about February 13, 2020, a Board of Pharmacy inspector conducted an inspection of Top Drugs Pharmacy. Respondent Ngo, pharmacist-in-charge, was present during the inspection. Based on the facts set forth below, their educational and professional background and knowledge of pharmacy and drug laws, the Board's inspectors found a pattern of dispensing controlled substance prescriptions with red flags of illegitimacy, and determined that on numerous occasions, Respondents failed to exercise their corresponding responsibility and best professional judgment to dispense only controlled substance prescriptions issued for legitimate medical purposes.

25. The inspectors focused on five prescribers, Dr. E.D., Dr. J.D., Dr. S.C., Dr. A.F., and Physician Assistant (PA) J.E. The inspector found those prescribers' prescriptions contained

1 significant irregularities and “red flags,” suggesting that prescriptions were not written or filled
2 for a legitimate medical purpose. Respondents’ prescribing profiles for these physicians indicated
3 that alprazolam, amphetamine salts, promethazine with codeine and/or oxycodone 30 mg
4 immediate-release, drugs associated with high rates of abuse and diversion, were the most
5 commonly prescribed drugs for these prescribers. Most, if not all of the prescriptions from these
6 prescribers exhibited obvious red flags of drug abuse that Respondents ignored when filling them,
7 in spite of the Respondents’ corresponding responsibility to ensure that all prescriptions
8 dispensed were for a legitimate medical purpose.

9 Those red flags included:

10 Multiple patients at the same or similar address;

11 Cash payments;

12 Prescriptions written for an unusually large quantity of drugs;

13 Prescriptions written for potentially duplicative drugs;

14 The same combinations of drugs prescribed for multiple patients;

15 Initial prescriptions written for strong opiates;

16 Long distances traveled from the patient’s home to the prescriber’s office or
17 pharmacy;

18 Irregularities in the prescriber’s qualifications in relation to the medication(s)
19 prescribed;

20 Prescriptions that are written outside of the prescriber’s medical specialty;

21 Prescriptions for medications with no logical connection to diagnosis or treatment.

22 26. From January 22, 2018 through April 30, 2020, Respondents dispensed 10,298
23 prescriptions for non-controlled substances, comprising 90.3% of the total prescriptions
24 dispensed. With many more medical conditions requiring treatment with non-controlled
25 medications than controlled medications, this distribution is expected for a community pharmacy
26 such as Respondent Top Drugs Pharmacy. The low percentages of controlled substance
27 prescriptions dispensed would cause patterns of irregularities from particular prescribers to stand
28 out, especially if multiple identical or similar prescriptions were presented on the same day, or

close to the same day. Of the top ten drugs (controlled and non-controlled) dispensed by Respondent Top Drugs Pharmacy, oxycodone 30 mg was the third most commonly dispensed, with a total amount paid by patients (out-of-pocket price) of \$84,439. The second highest total amount paid by patients (out-of-pocket price) was \$925.00, for ibuprofen 600 mg. The top five highest cash pay drugs dispensed by Respondent Top Drugs Pharmacy were oxycodone 30 mg, amphetamine salts 30 mg, promethazine/codeine syrup (ml), Narcan 4 mg spray, and alprazolam 2 mg. The percentage of cash payment for controlled substances dispensed by Respondent Top Drugs Pharmacy was more than three to five times that of non-controlled substances. This high percentage of cash payment for controlled substances was irregular for a retail pharmacy.

27. Top Drugs Pharmacy dispensed the following:

Oxycodone:

Drug	Number of prescriptions	Percent of total	Number with cash payment	Percent with cash payment
oxycodone 5 mg	0	0	0	0%
oxycodone 10 mg	1	0.5%	0	0%
oxycodone 15 mg	32	14.5%	0	0%
oxycodone 20 mg	4	1.8%	1	25%
oxycodone 30 mg	183	83.2%	165	90.2%
Total	220		166	

Oxycodone 30 mg prescriptions stood out as a group as having the following irregularities:

Higher percentage of oxycodone 30 mg compared to lower strengths;

Higher cash payment percentage for 30 mg strength than lower strengths of oxycodone, and more than most other controlled substances;

Large amounts of money charged to patients for these prescriptions, more than any other drug.

Alprazolam

Drug	Number of prescriptions	Percent of total	Number with cash payment	Percent with cash payment
alprazolam 0.25 mg	3	3.1%	0	0%
alprazolam 0.5 mg	10	10.2%	0	0%
alprazolam 1 mg	10	10.2%	0	0%
alprazolam 2 mg	75	76.5%	73	97.3%
Total	98		73	

Alprazolam 2 mg prescriptions stood out as a group as having the following irregularities:

Higher percentage of alprazolam 2 mg compared to lower strengths;
Higher cash payment percentage for 2 mg strength than lower strengths of
alprazolam, and more than most other controlled substances.

Amphetamine salts

Drug	Number of prescriptions	Percent of total	Number with cash payment	Percent with cash payment
Amphetamine salts 30 mg	68	100%	68	100%

Amphetamine salts 30 mg prescriptions stood out as a group as having the following irregularities:

Only the highest available strength was dispensed;

All were from one prescriber;

All were for cash payment.

28. Dosing for oxycodone, alprazolam, and amphetamine salts was inconsistent with the principles of safe dosing, and titrating patients individually up from the lowest effective dose. This factor of irregularity would need to be resolved before dispensing controlled substances in the highest strengths, particularly if other red flags of illegitimacy existed. These patterns of irregularities from particular prescribers would stand out, especially if multiple identical or similar prescriptions were presented on the same day, or in the same time periods.

29. The above highest strength controlled substances, as well as promethazine/codeine, are very well known to be commonly sought after for abuse. The following prescribers contributed to the vast majority of these drugs dispensed by Respondent Top Drugs Pharmacy:

Prescriber	Drug	Number of prescriptions	Percent of total prescriptions dispensed of these drugs from each prescriber
Dr. S.C.	oxycodone 30 mg	31	16.9%
Dr. J.D.	oxycodone 30 mg	53	29.0%
Dr. E.D.		62	82.7%
		68	100%
PA J.E.	alprazolam 2 mg	11	14.7%

Dr. A.F.	oxycodone 30 mg	55	30.1%
	promethazine-codeine	98	87.5%
	oxycodone 30 mg	42	23.0%
	promethazine-codeine	8	7.1%

Just these five prescribers accounted for the following totals:

Drug	Number of prescriptions	Total percent of prescriptions dispensed from above prescribers
Oxycodone 30 mg	183	98.9%
Amphetamine salts 30 mg	68	100%
Promethazine/codeine syrup	112	94.6%
Alprazolam 2 mg	73	97.3%

30. From January 22, 2018 through April 30, 2020, Respondents dispensed **436** prescriptions for controlled substances under the prescribing authority of the above five prescribers. Having nearly all of these commonly sought drugs of abuse prescribed by just these five prescribers was a factor of irregularity.

PA J.E.

31. PA J.E. prescribed, and Respondents dispensed, the following: 29,019 mL of promethazine with codeine; 6,370 tablets of oxycodone immediate-release 30 mg; 900 tablets of alprazolam 2 mg; and 480 tablets of hydrocodone/APAP 10/325 mg. The two most common controlled substances prescribed by PA J.E. and dispensed by Respondents were promethazine/codeine and oxycodone 30 mg (the highest immediate release tablet available).

32. The uniformity of treatment is very irregular. There is patient variability in medical conditions, with not all being of the same cause, and thus requiring a variety of treatments. There was no adjustment in the oxycodone prescribing pattern from PA J.E. for age, weight, diagnosis,

1 drug allergies, medical histories, the severity of symptoms being treated, tolerance to drugs, or
2 other patient related factors.

3 33. The patterns of controlled substances dispensed, per prescriptions from PA J.E., by
4 Respondents, presented at least the following factors of irregularity, and contrasted with
5 legitimate prescribing and dispensing of controlled substances:

6 All oxycodone prescriptions were for 30 mg, the highest strength available;

7 All controlled substance prescriptions were for cash payment;

8 23 of the 30 patients (76%) were prescribed oxycodone 30 mg;

9 25 of the 30 patients (83%) were prescribed promethazine/codeine;

10 Uniformity of treatment for multiple patients receiving similar or identical controlled
11 substances on the same day;

12 Multiple patients dispensed overlapping treatment with oxycodone and

13 promethazine/codeine, for which there is a boxed warning of serious risks;

14 Multiple patients dispensed overlapping treatment with oxycodone and alprazolam,
15 for which there is a boxed warning of serious risks;

16 Numerous patients were repeatedly prescribed promethazine/codeine (indicated for
17 the temporary relief of cough), some with full pint bottles, paying up to \$200.00
18 cash for a bottle of cough syrup.

19 Dr. J.D.

20 34. Dr. J.D. prescribed, and Respondents dispensed, 4,950 tablets of oxycodone
21 immediate-release 30 mg. The only controlled substance prescribed by Dr. J.D. and dispensed by
22 Respondents was oxycodone 30 mg. This drug is very well known to be sought for abuse. Most
23 irregular were the following factors:

24 20 out of 20 (100%) of the oxycodone prescriptions were for 30 mg, the highest
25 strength available;

26 20 out of the 20 different patients from Dr. J.D. were prescribed oxycodone;

27 All were for cash payment, with some patients paying as much \$720.00 for their
28 prescription,

35. The uniformity of treatment is very irregular. There is patient variability in medical conditions, with not all being of the same cause, and thus requiring a variety of treatments. Due to the various presentations of pain symptoms, medications with differing mechanisms of actions are typically prescribed for the legitimate treatment of pain. There was no adjustment in the prescribing pattern from Dr. J.D. for age, weight, diagnosis, drug allergies, medical histories, the severity of symptoms being treated, tolerance to drugs, or other patient related factors.

Dr. A.F.

36. Dr. A.F. prescribed, and Respondents dispensed, the following: 1,920 mL of promethazine with codeine; 3,860 tablets of oxycodone immediate-release 30 mg; 84 tablets of oxycodone immediate-release 20 mg; and 120 tablets of hydrocodone/APAP 10/325 mg.

37. The uniformity of treatment is very irregular. There is patient variability in medical conditions, with not all being of the same cause, and thus requiring a variety of treatments. Due to the various presentations of pain symptoms, medications with differing mechanisms of actions are typically prescribed for legitimate treatment of pain. There was almost no adjustment in the oxycodone prescribing pattern from Dr. A.F. for age, weight, diagnosis, drug allergies, medical histories, the severity of symptoms being treated, tolerance to drugs, or other patient related factors.

38. The patterns of controlled substances dispensed per prescriptions from Dr. A.F. by Respondents, presented at least the following factors of irregularity, and contrasted with legitimate prescribing and dispensing of controlled substances:

42 of the 43 oxycodone prescriptions were for 30 mg, the highest strength available;

22 of the 27 different patients from Dr. A.F. were prescribed oxycodone 30 mg;

Over 80% of the prescriptions were paid with cash;

Sudden influx for multiple patients for the same drug;

Dr. S.C.

39. Dr. S.C. prescribed, and Respondents dispensed, 3,510 tablets of oxycodone immediate-release 30 mg.

1 40. The uniformity of treatment is very irregular. There is patient variability in medical
2 conditions, with not all being of the same cause, and thus requiring a variety of treatments. Due to
3 the various presentations of pain symptoms, medications with differing mechanisms of actions are
4 typically prescribed for legitimate treatment of pain. There was no adjustment in the oxycodone
5 prescribing pattern from Dr. S.C. for age, weight, diagnosis, drug allergies, medical histories, the
6 severity of symptoms being treated, tolerance to drugs, or other patient related factors.

7 41. The patterns of controlled substances dispensed per prescriptions from Dr. S.C. by
8 Respondents, presented at least the following factors of irregularity, and contrasted with
9 legitimate prescribing and dispensing of controlled substances:

10 All of the oxycodone prescriptions were for 30 mg, the highest strength available;

11 All 10 different patients from Dr. S.C. were prescribed oxycodone 30 mg;

12 Over 74% of the prescriptions were paid with cash, with some patients paying as
13 much \$720.00 for their prescription;

14 It is irregular for a family and sports medicine doctor to prescribe oxycodone to all
15 patients.

16 Dr. E.D.

17 42. Dr. E.D. prescribed, and Respondents dispensed, the following: 6,120 tablets of
18 amphetamine salts 30 mg, and 5,730 tablets of alprazolam 2 mg.

19 43. The patterns of controlled substances dispensed per prescriptions from Dr. E.D. by
20 Respondents, presented at least the following factors of irregularity, and contrasted with
21 legitimate prescribing and dispensing of controlled substances:

22 All of the prescriptions were for the highest strengths available; All

23 15 different patients were prescribed amphetamine salts 30 mg; All

24 15 different patients were prescribed to take three tablets daily; 14

25 of the 15 patients were also prescribed alprazolam 2 mg;

26 All were for cash payment.

27 44. Additionally, amphetamine salts is to be labeled to be dosed in two to three divided
28 doses. All of the amphetamine salts prescriptions were written by Dr. E.D., and dispensed, with

1 instructions to take three tablets daily. There were no notes or other documentation to indicate if
2 the prescriber wrote this in error, and actually meant to prescribe one tablet three times per day.
3 These patients could reasonably assume this meant to take the three tablets all at once, once per
4 day, especially since all but one patient were also prescribed alprazolam 2 mg with contrasting
5 directions to take one tablet three to four times per day. This is exactly the type of intervention
6 which should have occurred in the usual course of professional pharmacy practice to prevent
7 patients from taking drugs incorrectly; however, Respondents failed to intervene.

8 45. Many patients being treated by Dr. E.D. were also apparently treated with oxycodone
9 and promethazine/codeine.

10 46. The uniformity of treatment is very irregular. There is patient variability in medical
11 conditions, with not all being of the same cause, and thus requiring a variety of treatments. Due to
12 the various presentations of pain symptoms, medications with differing mechanisms of actions are
13 typically prescribed for legitimate treatment of pain. There was almost no adjustment in the
14 oxycodone prescribing pattern from Dr. E.D. for age, weight, diagnosis, drug allergies, medical
15 histories, the severity of symptoms being treated, tolerance to drugs, or other patient related
16 factors.

17 47. It was a factor of irregularity for multiple patients from one prescriber to also receive
18 treatment with interacting drugs from other prescribers. There was no indication or
19 documentation to show any attempts to ensure this type of treatment was legitimate and being
20 coordinated with all involved prescribers, despite exhibiting the following irregularities:

21 Identical, or similar addresses for many patients;

22 Identical or similar treatments for ADHD, anxiety, pain, and cough for many patients;

23 11 of the 15 patients were also dispensed prescriptions from PA Edwards.

24 48. Respondents dispensed controlled substances without ensuring they were for a
25 legitimate medical use when obvious, objective, and systemic signs of irregularities and red flags
26 of illegitimacy existed as detailed above.

27 49. Respondents dispensed controlled substances even though customers from certain
28 prescribers paid for a large percentage of these medications in cash even though pharmacists

1 know that almost all patients seek reimbursement from insurance companies or government
2 agencies for medications.

3 50. Although there are no restrictions or limits in pharmacy law for the price charged by
4 drugs for pharmacies, the cash price for oxycodone 30 mg (up to \$540.00 for 90 tablets, and
5 \$720.00 for 120 tablets) charged by Respondent Top Drugs Pharmacy appears to be much higher
6 than amounts charged by other pharmacies. This would make the irregularity of cash payment
7 particularly stand out as multiple patients paid large sums of money for certain controlled
8 substances.

9 51. Normal pricing structures at pharmacies have the same price for a drug, regardless of
10 the prescriber. Between September and December of 2019, Respondent Top Drugs Pharmacy
11 charged patients of Dr. S.C. \$2.00 per tablet on cash prescriptions for oxycodone 30 mg;
12 however, Respondent charged patients of Dr. J.D. and Dr. A.F. \$6.00 per tablet on cash
13 prescriptions for oxycodone 30 mg. Charging three times as much for oxycodone 30 mg from
14 certain prescribers is a factor of irregularity for these prescriptions.

15 52. Respondents filled prescriptions in which patients received oxycodone 30 mg tablets
16 at dosages which were at least twice the recommended starting, or restarting, dose. The CURES
17 reports showed that these patients had not received an opioid over a time, and in an amount,
18 which would make appropriate dosing with oxycodone 30 mg to patients who were not opioid
19 tolerant.

20 53. Respondents are required to maintain records of all prescriptions dispensed, and a
21 review of prescriptions written by the prescribers detailed above would have been possible.
22 Respondents failed to review the readily available patient and prescription records which would
23 supply necessary information to use their best professional judgment in making appropriate
24 dispensing decisions. When the sudden influx of these prescriptions occurred at Respondent Top
25 Drugs Pharmacy, reasonable and prudent pharmacists would have had enough objective
26 information to identify these prescriptions as not being issued in the usual course of professional
27 practice. These prescriptions were exactly as would be expected for illegitimate prescriptions.
28

54. The data illustrated that Respondents failed to fulfill their corresponding responsibility by dispensing the following excessive amounts of controlled substances:

Totals dispensed from prescribers with red flags of illegitimacy

Drug	Number of prescriptions	Number of doses
alprazolam 2 mg	73	6,630
amphetamine 30 mg	68	6,120
oxycodone 30 mg	181	18,690
Promethazine/codeine (5 ml/dose)	106	6,187
Total	428	37,627

These prescriptions were presented with many factors of irregularity and red flags of illegitimacy, and Respondents failed to use available records and professional judgment when dispensing these controlled substances. The objective factors included but were not limited to:

Cash payment for controlled substances was three to five times more common than non-controlled substances;

Oxycodone 30 mg was the third most common drug (including non-controlled) dispensed;

Over six times as much money paid by patients for oxycodone 30 mg than any other drug;

Oxycodone 30 mg accounted for much more (83%) compared to lower strengths of oxycodone;

Oxycodone 30 mg cash payment was much more (90%) compared to lower strengths of oxycodone;

Oxycodone 30 mg cash price was three times higher for certain prescribers from September through December, 2019;

Oxycodone 30 mg was dispensed to the vast majority (76-100%) of patients from certain prescribers;

Higher percentage of alprazolam 2 mg (76%) compared to other lower strengths;

Higher cash payments for alprazolam 2 mg (97%) compared to other lower strengths;

Amphetamine 30 mg was the only strength dispensed, no lower strengths;

1 Amphetamine 30 mg was only dispensed for cash payment;
2 All patients from one prescriber treated with amphetamine, with only the highest 30
3 mg strength;
4 Commonly sought drugs of abuse predominately (94-100%) prescribed by just a few
5 prescribers;
6 Promethazine/codeine dispensed to vast majority (83%) of patients from one
7 prescriber;
8 Commonly sought drugs of abuse dispensed with other interacting controlled
9 substances, including oxycodone with promethazine/codeine, and oxycodone with
10 alprazolam;
11 Multiple patients receiving similar or identical treatment with promethazine/codeine
12 on the same days;
13 Sudden influx of commonly sought drugs of abuse from certain prescribers with red
14 flag patterns;
15 Uniformity of treatment for many patients, with no individually based treatment;
16 17 patients restarted on at least over twice the safe starting dose of oxycodone on 19
17 occasions.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct-Gross Negligence Against All Respondents)**

20 55. Respondents are subject to disciplinary action under Code sections 4301, subdivision
21 (c), in that Respondents owned, managed, and operated Top Drugs Pharmacy in an
22 unprofessional manner with the inappropriate exercise, training, or experience and best
23 professional judgment in that they:

24 a. Dispensed, or allowed to be dispensed, controlled substance prescriptions and
25 ignored, or wasn't aware of, objective signs of irregularity and abuse;

26 b. Dispensed, or allowed to be dispensed, controlled substance prescriptions without
27 ensuring they were issued for a legitimate medical purpose and the usual course of professional
28 practice;

1 c. Failed to consult appropriate patient, prescription, and other records to prevent the
2 dispensing of illegitimate prescriptions.

3 56. As described above, Respondents repeatedly furnished prescriptions for controlled
4 substances even though obvious and systemic “red flags” were present to indicate those
5 prescriptions were not issued for a legitimate medical purpose. Respondents’ conduct was a gross
6 deviation from the standard of safe pharmacy practice, and could cause harm to patients or other
7 persons.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct-Excessive Prescribing Against All Respondents)**

10 57. Respondents are subject to disciplinary action under Code sections 4301, subdivision
11 (d), for violating Health and Safety Code section 11153, subdivision (a), for the clearly excessive
12 furnishing of controlled substances, as follows:

13 a. Dispensed, or allowed to be dispensed, controlled substance prescriptions and
14 ignored, or wasn’t aware of, objective signs of irregularity and abuse;

15 b. Dispensed, or allowed to be dispensed, controlled substance prescriptions without
16 ensuring they were issued for a legitimate medical purpose and the usual course of professional
17 practice;

18 c. Failed to consult appropriate patient, prescription, and other records to prevent the
19 dispensing of illegitimate prescriptions.

20 58. As described above, Respondents repeatedly furnished prescriptions for controlled
21 substances even though obvious and systemic “red flags” were present to indicate those
22 prescriptions were not issued for a legitimate medical purpose.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct-Failing to Comply with Corresponding Responsibility 25 for Controlled Substance Prescriptions Against All Respondents)**

26 59. Respondents are subject to disciplinary action under Code sections 4301, subdivisions
27 (j) and (o), for violating Health and Safety Code section 11153, subdivision (a), and Code of
28 Federal Regulations, Title 21, section 1306.04, subdivision (a), because they failed to comply

1 with their corresponding responsibility to ensure that controlled substances were dispensed for a
2 legitimate medical purpose. As described above, Respondents repeatedly furnished prescriptions
3 for controlled substances even though obvious and systemic “red flags” were present to indicate
4 those prescriptions were not issued for a legitimate medical purpose.

5 **FOURTH CAUSE FOR DISCIPLINE**

6 **(Failing to Exercise or Implement Best Professional Judgment or Corresponding** 7 **Responsibility when Dispensing Controlled Substances** 8 **Against Respondents Haiduong Ngo and Tom Thuy Phung)**

9 60. Respondents Haiduong Ngo and Tom Thuy Phung are subject to disciplinary action
10 under Code section 4301, subdivision (c), for violating Business and Professions Code section
11 4306.5, subdivisions (a) and (b), because they failed to exercise or implement their best
12 professional judgment or corresponding responsibility when dispensing controlled substances, as
13 described above.

14 **FIFTH CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct against All Respondents)**

16 61. Respondents are subject to disciplinary action under Code section 4301 for
17 unprofessional conduct because they engaged in the activities described above.

18 **OTHER MATTERS**

19 62. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit No. PHY
20 55878 issued to Top Drugs Pharmacy, it shall be prohibited from serving as a manager,
21 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
22 Pharmacy Permit Number PHY 55878 is placed on probation or until the Pharmacy Permit is
23 reinstated if it is revoked.

24 63. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit No. PHY
25 55878 issued to Top Drugs Pharmacy, while Haiduong Ngo has been an owner or manager and
26 had knowledge of or knowingly participated in any conduct for which the licensee was
27 disciplined, she shall be prohibited from serving as a manager, administrator, owner, member,
28

officer, director, associate, or partner of a licensee for five years if the Pharmacy Permit is placed on probation or until the Pharmacy Permit is reinstated, if it is revoked.

64. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit No. PHY 55878 issued to Top Drugs Pharmacy while Tom Thuy Phung has been an owner or manager and had knowledge of or knowingly participated in any conduct for which the licensee was disciplined, he shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if the Pharmacy Permit is placed on probation or until the Pharmacy Permit is reinstated, if it is revoked.

65. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License No. RPH 54675 issued to Haiduong Ngo, she shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if the Pharmacist License is placed on probation or until the Pharmacist License is reinstated, if it is revoked.

66. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License No. RPH 52739 issued to Tom Thuy Phung, he shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if the Pharmacist License is placed on probation or until the Pharmacist License is reinstated, if it is revoked.

PRAYER

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

1. Revoking or suspending Permit Number PHY 55878, issued to Top Drugs Pharmacy Inc., dba Top Drugs Pharmacy;

2. Revoking or suspending Pharmacist License Number RPH 54675, issued to Haiduong Ngo;

3. Revoking or suspending Pharmacist License Number RPH 52739, issued to Tom Thuy Phung;

4. Prohibiting Top Drugs Pharmacy, Inc., dba Top Drugs Pharmacy from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 55878 is placed on probation or until the Pharmacy Permit is reinstated, if it is revoked;

5. Prohibiting Haiduong Ngo from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 55878 is placed on probation or until the Pharmacy Permit is reinstated, if it is revoked;

6. Prohibiting Tom Thuy Phung from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 55878 is placed on probation or until the Pharmacy Permit is reinstated, if it is revoked;

7. Prohibiting Haiduong Ngo from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacist License Number RPH 54675 is placed on probation or until the Pharmacist License is reinstated, if it is revoked;

8. Prohibiting Tom Thuy Phung from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if Pharmacist License Number RPH 52739 is placed on probation or until the Pharmacist License is reinstated, if it is revoked;

9. Ordering Top Drugs Pharmacy, Inc., dba Top Drugs Pharmacy, Haiduong Ngo and Tom Thuy Phung 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,

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

DATED: 1/31/2021

Signature on File

ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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