

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

In the Matter of the Accusation Against:

Case No. 5413

**OPTUMRX INC., DBA OPTUMRX
2858 Loker Avenue East, Ste. 100
Carlsbad, CA 92010**

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

Pharmacy Permit Number PHY 47482

**PHONG QUOC LY
2858 Loker Avenue East, Ste. 100
Carlsbad, CA 92010**

Pharmacist License No. RPH 51836

Respondents.

DECISION AND ORDER

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 January 23, 2017.

It is so ORDERED on December 23, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
Deputy Attorney General
4 State Bar No. 126461
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Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 5413

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13 **2858 Loker Avenue East, Ste. 100**
14 **Carlsbad, CA 92010**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR PUBLIC
REPROVAL

15 **Pharmacy Permit No. PHY 47482**

[Bus. & Prof. Code § 495]

16 **PHONG QUOC LY**
17 **2858 Loker Ave East, Ste. 100**
18 **Carlsbad, CA 92010**

19 **Pharmacist License No. RPH 51836**

20 Respondents.

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

24 PARTIES

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

1 2. Respondents OptumRx Inc., doing business as OptumRx and Phong Quoc Ly
2 (Respondents) are represented in this proceeding by attorney Edward D. Rickert of Quarles &
3 Brady LLP, whose address is: One Renaissance Square, Two North Central Avenue,, Phoenix,
4 Arizona 85004-2391.

5 PARTIES

6 3. On or about March 22, 2006, the Board of Pharmacy issued Pharmacy Permit No.
7 PHY 47482 to OptumRx Inc., doing business as OptumRx (Respondent). The Pharmacy Permit
8 was in full force and effect at all times relevant to the charges brought in Accusation No. 5413
9 and will expire on March 1, 2017, unless renewed.

10 4. On or about August 30, 2000, the Board of Pharmacy issued Pharmacist License
11 Number RPH 51836 to Phong Quoc Ly (Respondent Phong Ly). The Pharmacist License was in
12 full force and effect at all times relevant to the charges brought herein and will expire on
13 November 30, 2017, unless renewed.

14 JURISDICTION

15 5. Accusation No. 5413 was filed before the Board of Pharmacy (Board), Department of
16 Consumer Affairs and is currently pending against Respondent. The Accusation and all other
17 statutorily required documents were properly served on Respondents on April 4, 2016.
18 Respondents timely filed their Notice of Defense contesting the Accusation. A copy of
19 Accusation No. 5413 is attached as exhibit A and incorporated herein by reference.

20 ADVISEMENT AND WAIVERS

21 6. Respondents have carefully read, fully discussed with counsel, and understands the
22 charges and allegations in Accusation No. 5413. Respondents have also carefully read, fully
23 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
24 Order for Public Repeval.

25 7. Respondents are fully aware of their legal rights in this matter, including the right to a
26 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
27 the witnesses against them; the right to present evidence and to testify on their own behalf; the
28 right to the issuance of subpoenas to compel the attendance of witnesses and the production of

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

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

5 CULPABILITY

6 9. Respondents understand and agree that the charges and allegations in Accusation
7 No. 5413, if proven at a hearing, constitute cause for imposing discipline upon their respective
8 Pharmacy Permit and Pharmacist License.

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

13 11. Respondent OptumRx agrees that its Pharmacy Permit is subject to discipline and
14 Respondent Phong Ly agrees that his Pharmacist License is subject to discipline and they agree to
15 be bound by the Disciplinary Order below.

16 CONTINGENCY

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

27 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
28 copies of this Stipulated Settlement and Disciplinary Order for Public Repeval, including

1 Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and
2 effect as the originals.

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

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

13 **DISCIPLINARY ORDER**

14 IT IS HEREBY ORDERED that Pharmacy Permit No. PHY 47482 issued to Respondent
15 OptumRx Inc., doing business as OptumRx (Optum Rx) and Pharmacist License No. RPH 51836
16 issued to Respondent Phong Quoc Ly (Phong Quoc Ly) shall be publicly reapproved by the Board
17 of Pharmacy under Business and Professions Code section 495 based on the allegations set forth
18 in Accusation No. 5413 which is attached hereto as Exhibit A and incorporated by reference as
19 though fully set forth herein.

20 IT IS FURTHER ORDERED that OptumRx shall comply with the terms and conditions as
21 set forth below. Any violation of the terms and conditions shall constitute unprofessional conduct
22 and grounds for further disciplinary action.

23 IT IS FURTHER ORDERED that OptumRx shall pay \$7,930.25 to the Board for its costs
24 associated with the investigation and enforcement of this matter. OptumRx shall be permitted to
25 pay these costs in a payment plan approved by the Board. If OptumRx fails to pay the Board
26 costs as ordered, OptumRx shall not be allowed to renew its Pharmacy Permit until OptumRx
27 pays costs in full.
28

1 IT IS FURTHER ORDERED that within sixty (60) days of the effective date of this
2 decision, OptumRx shall submit to the Board or its designee, for prior approval, a community
3 service program in which OptumRx shall provide free sharp disposal containers or provide free or
4 at a reduced cost immunizations, brown bag consultations, or other healthcare related services to
5 a community, charitable facility or agency valuing \$20,000.00. Within thirty (30) days of board
6 approval thereof, OptumRx shall submit documentation to the Board demonstrating
7 commencement of the community service program. OptumRx shall complete the community
8 service program and report on that completion to the board within six (6) months of the effective
9 date of the decision.

10 ACCEPTANCE


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

16
17 DATED: 11/4/16


18 PHONG QUOC LY
Respondent

19 //
20 //
21 //
22 //
23 //
24 //
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26 //
27 //
28 //

1 I am authorized to sign on behalf of OptumRx Inc., doing business as OptumRx. I have
2 carefully read the above Stipulated Settlement and Disciplinary Order for Public Repeval and
3 have fully discussed it with my attorney, Edward D. Rickert. I understand the stipulation and the
4 effect it will have on the Pharmacy Permit. On behalf of OptumRx Inc., doing business as
5 OptumRx, I enter into this Stipulated Settlement and Disciplinary Order for Public Repeval
6 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
7 Board of Pharmacy.

8
9 DATED: _____ 
10 BRIAN WENGER
11 General Counsel, Optum, Inc. and Authorized Agent
12 for OPTUMRX INC., DBA OPTUMRX

13 I have read and fully discussed with Respondent OptumRx Inc., doing business as
14 OptumRx and Phong Quoc Ly the terms and conditions and other matters contained in the above
15 Stipulated Settlement and Disciplinary Order for Public Repeval. I approve its form and content.

16 DATED: _____ 
17 EDWARD D. RICKERT
18 Attorney for Respondent

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ENDORSEMENT

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

DATED: 11/7/16

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General

DESIREE I. KELLOGG
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 5413

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2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
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Carlsbad, CA 92010

A C C U S A T I O N

14 **Pharmacy Permit No. PHY 47482**

15 **PHONG QUOC LY**
16 **2858 Loker Ave East, Ste. 100**
Carlsbad, CA 92010

17 **Pharmacist License No. RPH 51836**

18 Respondents.
19

20
21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about March 22, 2006, the Board of Pharmacy issued Pharmacy Permit
26 Number PHY 47482 to OptumRx Inc., doing business as OptumRx (Respondent OptumRx). The
27 Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein
28 and will expire on March 1, 2017, unless renewed.

1 3. On or about August 30, 2000, the Board of Pharmacy issued Pharmacist License
2 Number RPH 51836 to Phong Quoc Ly (Respondent Phong Ly). The Pharmacist License was in
3 full force and effect at all times relevant to the charges brought herein and will expire on
4 November 30, 2017, unless renewed.

5 **JURISDICTION**

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

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

12 6. Section 4113(e) of the Code states:

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

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

17 8. Section 4300.1 of the Code states:

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

24 **STATUTORY AND REGULATORY PROVISIONS**

25 9. Section 733(a) states:

26 A licentiate shall not obstruct a patient in obtaining a prescription drug or
27 device that has been legally prescribed or ordered for that patient. A violation of this
28 section constitutes unprofessional conduct by the licentiate and shall subject the
29 licentiate to disciplinary or administrative action by his or her licensing agency.

30 10. Section 4301 of the Code states in pertinent part:

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

1 ...
2 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
3 abetting the violation of or conspiring to violate any provision or term of this chapter
4 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.

5 ...
6 **COST RECOVERY**

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

11 **DRUGS**

12 12. Atripla is the brand name for a combination of the generic drugs, efavirenz,
13 emtricitabine and tenofovir and is a dangerous drug pursuant to Business and Professions Code
14 section 4022. It is utilized to treat Human Immunodeficiency Virus (HIV) and Acquired Immune
15 Deficiency Syndrome (AIDS).

16 13. Lipitor is the brand name for atorvastatin and is a dangerous drug pursuant to
17 Business and Professions Code section 4022. It is utilized to treat hypercholesteremia.

18 14. Singulair is the brand name for montelukast and is a dangerous drug pursuant to
19 Business and Professions Code section 4022. It is utilized to treat asthma and prevent allergy
20 symptoms.

21 15. Zetia is the brand name for ezetimibe and is a dangerous drug pursuant to Business
22 and Professions Code section 4022. It is utilized to treat hypercholesteremia.

23 **FACTUAL ALLEGATIONS**

24 16. At all relevant times herein, Respondent dispensed prescription drugs to patients via
25 mail or overnight delivery services. From February 20, 2012 through the present, Respondent
26 Phong Ly was the Pharmacist-in-Charge of Respondent OptumRx.
27
28

1 Patient Christopher O.

2 17. On or about August 23, 2013, Dr. Timothy A. prescribed Atripla 600 mg-200 mg-300
3 mg with the instructions to take one tablet per day, in a quantity of 30 for a 30 day supply with 11
4 refills to patient Christopher O. On or about March 19, 2014, patient Christopher O. ordered a
5 refill of Prescription Number 100407835, Atripla, 600 mg-200 mg-300 mg tablets in a quantity of
6 30 tablets for a 30 day supply, from Respondents who informed him that he would receive his
7 refill on March 21, 2014. Respondents did not furnish the refill for Atripla on March 21, 2014.
8 Instead, Respondents initiated the dispensing process for a refill order in the quantity of 90 tablets
9 for a 90 day supply which caused the order to be placed on hold for prior insurance authorization.
10 Respondents then cancelled the refill order.

11 18. On March 21, 2014, patient Christopher O. contacted Respondents to inquire about
12 the status of his refill. Respondents informed him that his refill would be delivered to him on
13 March 24, 2014. However, Respondents did not dispense or furnish the refill on March 24, 2014,
14 resulting in a delay in the furnishing of a drug which the patient needed to take every day.
15 Instead, the prescription was delivered on March 25, 2014.

16 Patient Suzanne S.

17 19. On or about May 23, 2014, Dr. Christopher M. prescribed 90 tablets of Zetia with
18 directions to take 1 tablet daily with 3 additional refills. On or about August 19, 2014, patient
19 Suzanne S. requested a refill of her prescription for Zetia 10 mg from Respondent. On the order
20 form, she requested that the medication be delivered to an alternate address. Respondents
21 processed her order and charged her credit card shortly thereafter. Suzanne S. did not receive her
22 medication.

23 20. On August 30, 2014, Suzanne S. contacted Respondents to inquire about the status of
24 her medication. She was informed that her medication had not been sent to her alternative
25 address and that her medication would be reshipped to her. Suzanne S. did not receive her
26 medication.

27 21. On September 9, 2014, Suzanne S.'s husband contacted Respondents again to inquire
28 about the status of her medication. He was informed that another error had occurred and her

1 medication had not shipped. He was promised that it would be shipped via an overnight delivery
2 service and delivered by September 10 or 11, 2014. Suzanne S. did not receive her medication.

3 22. On September 12, 2014, Suzanne S.'s husband contacted Respondents. He was
4 informed that Respondents would attempt to arrange for the medication to be delivered
5 expeditiously on a Saturday and that an individual from "corporate" would contact her regarding
6 her medication within 24 hours. Suzanne S. did not receive her medication nor did anyone from
7 "corporate" contact her.

8 23. On September 13, 2014, Suzanne S.'s husband received a telephone call from
9 Respondents who told her that her medication would be shipped possibly on September 15, 2014.
10 On September 16, 2014, Suzanne S. received her medication from Respondents.

11 **Patient Jody M.**

12 24. On January 30, 2015, patient Jody M. requested that Respondents obtain a new
13 prescription for Lipitor 40mg from her physician, Dr. Anna S. Respondents did not receive a
14 response from Dr. Anna S to their request for a new prescription. On February 16, 2016, Jody M.
15 contacted Respondents to inquire about the status of her medication. She was informed that her
16 physician did not respond to the request for a new prescription. On February 17, 2015, she
17 contacted Respondents to request that another request for the new prescription be sent to Dr.
18 Anna S. Respondents' pharmacy clerk told Jody M. that another request would be sent to Dr.
19 Anna S. However, it was not sent to Dr. Anna S. nor was Jody M advised of the status of her
20 medication.

21 25. On February 24, 2015, Jody M. contacted Respondents because she had not received
22 her medication. Respondents issued yet another new prescription request to Dr. Anna S. On
23 February 27, 2015, Jody M. received her medication from Respondents.

24 **Patient Anne M.**

25 26. On February 9, 2015, patient Anne M.'s physician, Dr. Kevin B. transmitted a
26 prescription for Singulair 10mg to Respondents. On February 10, 2015, Anne M. contacted
27 Respondents to confirm that they had received the prescription for Singulair. She was told they
28 had received it and her medication would ship shortly. Anne M. did not receive her medication.

1 d. On July 9, 2014, the Board issued Citation number CI 2013 59891 against
2 Respondent OptumRx for violating Business and Professions Code section 733(a) in that it
3 obstructed the dispensing of prescription drugs.

4 e. On January 23, 2014, the Board issued Citation number CI 2012 54362 against
5 Respondent OptumRx for violating Business and Professions Code section 733(a) in that it
6 obstructed the dispensing of prescription drugs and devices and California Code of Regulations,
7 title 16, section 1716 for deviating from the requirements of a prescription without the prior
8 consent of the prescriber. The Board issued a fine which Respondent OptumRx paid.

9 f. On April 11, 2014, the Board issued Citation number CI 2013 60829 against
10 Respondent Phong Ly for violating Civil Code section 56.10(a) and California Code of
11 Regulations, title 16, section 1764 in that there was the unauthorized release of protected
12 healthcare information.

13 g. On April 11, 2014, the Board issued Citation number CI 2013 58107 against
14 Respondent OptumRx for violating Civil Code section 56.10(a) and California Code of
15 Regulations, title 16, section 1764 in that there was the unauthorized release of protected
16 healthcare information. The Board issued a fine which Respondent OptumRx paid.

17 h. On July 9, 2014, the Board issued Citation number CI 2013 59891 against
18 Respondent OptumRx for violating Business and Professions Code section 733(a) in that it
19 obstructed the dispensing of prescription drugs. The Board issued a fine which Respondent
20 OptumRx paid.

21 i. On February 14, 2013, the Board issued Citation number CI 2012 53121
22 against Respondent OptumRx for violating California Code of Regulations, title 16, section 1716
23 in that it dispensed a prescription without clarifying the dose with the prescriber. The Board
24 issued a fine which Respondent OptumRx paid.

25 j. On November 15, 2013, the Board issued Citation number CI 2012 56693
26 against Respondent OptumRx for violating Business and Professions Code section 733(a) in that
27 it obstructed the dispensing of prescription drugs. The Board issued a fine which Respondent
28 OptumRx paid.

1 k. On November 15, 2013, the Board issued Citation number CI 2013 58709
2 against Respondent Phong Ly for violating Business and Professions Code section 733(a) in that
3 she obstructed the dispensing of prescription drugs. The Board issued a fine which Respondent
4 Phong Ly paid.

5 l. On September 11, 2013, the Board issued Citation number CI 2012 54430
6 against Respondent OptumRx for violating California Code of Regulations, title 16, section 1716
7 in that it deviated from the requirements of a prescription without the prior consent of the
8 prescriber.

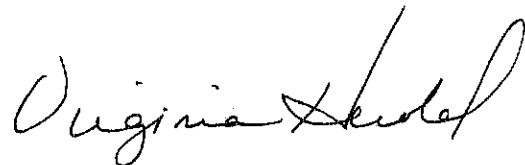
9 **PRAYER**

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

- 12 1. Revoking or suspending Pharmacy Permit Number PHY 47482, issued to OptumRx
13 Inc., doing business as OptumRx;
- 14 2. Revoking or suspending Pharmacist License Number RPH 51836, issued to Phong
15 Quoc Ly;
- 16 3. Ordering OptumRx Inc., doing business as OptumRX and Phong Quoc Ly to pay the
17 Board of Pharmacy the reasonable costs of the investigation and enforcement of this case,
18 pursuant to Business and Professions Code section 125.3;
- 19 4. Taking such other and further action as deemed necessary and proper.

20
21
22
23 DATED: _____

3/18/16



24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

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