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Attorneys for Complainant

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

In the Matter of the Accusation Against: MAI HUONG PHAN 16410 Jody Circle Westminster, CA 92683 Pharmacy Technician Reg. No. TCH 22618 Respondent.	Case No. 3189 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about August 14, 2008, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3189 against Mai Huong Phan (Respondent) before the Board of Pharmacy.

2. On or about June 3, 1997, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 22618 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2008, unless renewed.

3. On or about September 11, 2008, Jennifer Familo, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 3189, Statement to Respondent, Notice of Defense, Request for Discovery, and Government

Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is: 16410 Jody Circle, Westminster, CA 92683. A copy of the Accusation is attached as Exhibit A, and is incorporated herein by reference.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

5. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

6. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3189.

7. California Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the evidence on file herein, finds that the allegations in Accusation No. 3189 are true.

9. The total cost for investigation and enforcement in connection with the Accusation are $544.50 as of October 10, 2008.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Mai Huong Phan has subjected her Pharmacy Technician Registration No. TCH 22618 to discipline.

2. A copy of the Accusation is attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Accusation:

a. Respondent subjected her registration to discipline under sections 490 and 4301, subdivision (l) of the Code in that on or about March 28, 2006, in a criminal proceeding entitled *People v. Mai Huong Phan (a.k.a. Mai Do Phan, Mai Huong Do, Mai Hoang Phan),* Orange County Superior Court (West Justice Center), case number 06WM02453, Respondent was convicted on her plea of guilty of violating Penal Code section 487, subdivision (a), grand theft, a misdemeanor. Respondent was sentenced to three years informal probation, completion of 40 hours community service, payment of fees, fines, and restitution, and to stay away from victim Walgreens.

b. Respondent subjected her registration to disciplinary action under section 4301, subdivision (f) of the Code in that on or before October 10, 2005, while working as a pharmacy technician at Walgreens, Respondent obtained controlled substances from her employer.

c. Respondent subjected her registration to disciplinary action under section 4301, subdivision (j) of the Code in that on or before October 10, 2005, while working as a pharmacy technician at Walgreens, Respondent knowingly violated California statutes regulating controlled substances and dangerous drugs.

d. Respondent subjected her registration to disciplinary action under section 4301, subdivision (o) of the Code in that on or before October 10, 2005, while working as a pharmacy technician at Walgreens, Respondent violated federal and state laws and regulations governing pharmacy, including regulations established by the Board.

e. Respondent subjected her registration to disciplinary action under sections 4059 and 4060 of the Code in that on or before October 10, 2005, while working as a pharmacy technician at Walgreens, Respondent furnished to herself a controlled substance without a valid prescription.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 22618, heretofore issued to Respondent Mai Huong Phan, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on January 22, 2009.

It is so ORDERED December 23, 2008

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

KENNETH H. SCHELL
Board President

DOJ docket number: SD2008801691

Attachment: Exhibit A: Accusation No.3189

Exhibit A
Accusation No. 3189

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE
1300 I Street, Sacramento, CA 95814
Billing Inquiries: (916) 324-5090

Cost-of-Suit Summary

As Of 10/10/2008

Matter ID: SD2008801691

Date Opened: 07/02/2008

Description Phan, Mai Huong

Total Legal Costs:	**$544.50**
Cost-of-Suit:	**$0.00**
Grand Total:	**$544.50**

Matter Time Activity Summary

Rate	Hrs Wrkd	Amount
Professional Type: Attorney		
FY: 2008-2009		
$158.00	0.25	$39.50
FY 2008-2009 Total:		**$39.50**
Attorney Total:		**$39.50**
Professional Type: Paralegal		
FY: 2008-2009		
$101.00	5.00	$505.00
FY 2008-2009 Total:		**$505.00**
Paralegal Total:		**$505.00**
Total Legal Costs:		**$544.50**

Cost-of-Suit

Entry #	Journal Date	Vendor #	Vendor	Schedule	Reference	Amount
Client Agency:						
FY:						
Component Description:						
						$0.00
					Total:	**$0.00**
					FY Total:	**$0.00**
					Client Agency Total:	**$0.00**
					Cost-of-Suit:	**$0.00**

* Denotes soft costs which are not included in totals.

UNITED STATES POSTAL SERVICE

Track & Confirm

Search Results

Label/Receipt Number: **7160 3901 9845 5228 1746**
Status: **Notice Left**

We attempted to deliver your item at 2:42 PM on September 12, 2008 in WESTMINSTER, CA 92683 and a notice was left. It can be redelivered or picked up at the Post Office. If the item is unclaimed, it will be returned to the sender. Information, if available, is updated every evening. Please check again later.

Track & Confirm

Enter Label/Receipt Number.

Go >

Notification Options

Track & Confirm by email
Get current event information or updates for your item sent to you or others by email. Go >

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Postal Inspectors Preserving the Trust

Inspector General Promoting Integrity

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

In the Matter of the Accusation Against: MAI HUONG PHAN 16410 Jody Circle Westminster, CA 92683 Pharmacy Technician Reg. No. TCH 22618 Respondent.	Case No. 3189 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about June 3, 1997, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 22618 to Mai Huong Phan (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2008, unless renewed.

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JURISDICTION

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

4. Section 477 of the Code states:

As used in this division:

(a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

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

6. Section 4300 of the Code states:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

. . . .

7. Section 4301 of the Code states:

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

. . . .

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

. . . .

(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 by any other state or federal regulatory agency.

. . . .

8. Section 4022 of the Code 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.

9. Section 4059 of the Code states, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

10. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant

pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

. . . .

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

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

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

DRUG

12. Hydrocodone, also known as bitartrate and acetaminophen, is a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4), and is a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(March 28, 2006 Criminal Conviction for Grand Theft on October 10, 2005)

13. Respondent subjected her license to discipline under sections 490 and 4301, subdivision (l) of the Code in that she was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

a. On or about March 28, 2006, in a criminal proceeding entitled *People v. Mai Huong Phan (a.k.a. Mai Do Phan, Mai Huong Do, Mai Hoang Phan),* Orange County Superior Court (West Justice Center), case number 06WM02453, Respondent was

convicted on her plea of guilty of violating Penal Code section 487, subdivision (a), grand theft, a misdemeanor.

b. As a result of the conviction, on or about March 28, 2006, Respondent was sentenced to three years informal probation, completion of 40 hours community service, payment of fees, fines, and restitution, and to stay away from victim Walgreens.

c. The facts that led to the conviction were that on or about September 18, 2005, a pharmacist at a Huntington Beach Walgreens drug store noticed that there were hydrocodone pills missing from the pharmacy. The pharmacist contacted the store's loss prevention investigator ("investigator") who conducted an internal investigation and audit of the missing hydrocodone. The audit revealed approximately 619 pills missing from the pharmacy's inventory in the past year (2004-2005).

On or about September 28, 2005, the investigator mounted a hidden surveillance camera in the pharmacy and specifically focused the camera on the section containing the hydrocodone bottle, which was normally kept on a shelf behind the counter. While monitoring the surveillance tapes, the investigator noticed that on or about October 10, 2005, Respondent was videotaped taking the hydrocodone bottle from its shelf and walking out of the camera's view. Respondent returned a short time later and placed the hydrocodone bottle back on the shelf. The following day, on or about October 11, 2005, the investigator conducted an audit of the hydrocodone bottle and discovered that 11 pills were missing and no prescriptions for hydrocodone were filled on October 10, 2005, the day Respondent was observed removing the bottle from the shelf.

On or about October 14, 2005, the investigator interviewed Respondent regarding the missing hydrocodone pills. Respondent admitted to the investigator that she had stolen approximately 1,000 pills over a 1 ½ year period. Respondent stated that she would take anywhere from 3 to 8 tablets at a time from the bottles and place them in the pocket of her Walgreens employee vest. The investigator contacted the Huntington Beach Police Department, who conducted a second interview with Respondent. Respondent told the officer that she began stealing the hydrocodone pills approximately 1 ½ years earlier because she was suffering from

migraine headaches and the medication she had been prescribed was not providing relief. Respondent's employment with Walgreens was terminated and she was arrested and taken into custody. The investigator estimated the loss they could document (619 pills), at $2.00/pill, to be $1,238. Based on Respondent's estimate that she had stolen approximately 1,000 pills, the loss would have amounted to $2,000.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Commission of Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit & Corruption)

14. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the Code in that on or before October 10, 2005, while working as a pharmacy technician, Respondent obtained controlled substances from her employer, Walgreens, using fraud, deceit, and dishonesty, as detailed in paragraph 13(c), above.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Violation of California Statutes Regulating Controlled Substances & Dangerous Drugs)

15. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the Code in that on or before October 10, 2005, while working as a pharmacy technician, Respondent knowingly violated California statutes regulating controlled substances and dangerous drugs, as detailed in paragraph 13(c), above.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Violating Federal & State Laws & Regulations Governing Pharmacy)

16. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the Code in that on or before October 10, 2005, while working as a pharmacy technician, Respondent violated federal and state laws and regulations governing pharmacy, including regulations established by the Board, as detailed in paragraph 13(c), above.

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FIFTH CAUSE FOR DISCIPLINE

(Furnishing Dangerous Drugs)

17. Respondent is subject to disciplinary action under sections 4059 and 4060 of the Code in that on or before October 10, 2005, while working as a pharmacy technician, Respondent furnished to herself a controlled substance without a valid prescription, as detailed in paragraph 13(c), above.

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 Pharmacy Technician Registration Number TCH 22618, issued to Mai Huong Phan;

2. Ordering Mai Huong Phan 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;

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

DATED: 8/14/08

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

SD2008801691

80258850.wpd