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

11 In the Matter of the Accusation Against:

Case No. 3673

12 **TOMMY TUNG NGUYEN, RPH**
13 **17051 Ralphs Ranch Road**
San Diego, CA 92127
14 **Pharmacist's License No. RPH 56600,**

A C C U S A T I O N

15 **and**

16 **SAM'S PHARMACY**
17 **6336 College Grove Way**
San Diego, CA 92115
18 **Pharmacy No. PHY 44662,**

19 Respondents.

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 November 15, 2004, the Board of Pharmacy issued Pharmacist's License
26 Number RPH 56600 to Tommy Tung Nguyen, RPH (Respondent Nguyen). The Pharmacist's
27 License was in full force and effect at all times relevant to the charges brought herein and will
28 expire on June 30, 2012, unless renewed.

1 9. Section 4059 of the Code states:

2 "(a) A person may not furnish any dangerous drug, except upon the prescription of a
3 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
4 3640.7. A person may not furnish any dangerous device, except upon the prescription of a
5 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section
6 3640.7."

7 10. Section 4060 of the Code states:

8 "No person shall possess any controlled substance, except that furnished to a person upon
9 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
10 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
11 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
12 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
13 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
14 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
15 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
16 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
17 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
18 labeled with the name and address of the supplier or producer.

19 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
20 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
21 devices."

22 11. Section 4081 of the Code states:

23 "(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs
24 or dangerous devices shall be at all times during business hours open to inspection by authorized
25 officers of the law, and shall be preserved for at least three years from the date of making. A
26 current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary
27 food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital,
28 institution, or establishment holding a currently valid and unrevoked certificate, license, permit,

1 registration, or exemption under Division 2 (commencing with Section 1200) of the Health and
2 Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and
3 Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

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

7 12. Section 4156 of the Code states:

8 A pharmacy corporation shall not do, or fail to do, any act where doing or failing to do the
9 act would constitute unprofessional conduct under any statute or regulation. In the conduct of its
10 practice, a pharmacy corporation shall observe and be bound by the laws and regulations that
11 apply to a person licensed under this chapter.

12 13. Section 4301 of the Code states:

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

16 "...

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

20 "...

21 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
22 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
23 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
24 to the extent that the use impairs the ability of the person to conduct with safety to the public the
25 practice authorized by the license.

26 "...

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

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“... ”

"(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."

14. Section 4306.5 of the Code 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.”

15. Health and Safety Code section 11171 states:

“No person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division.”

REGULATIONS

16. Title 16, California Code of Regulations, Section 1714 provides:

“... ”

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

“... ”

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

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1 17. Title 16, California Code of Regulations, Section 1715.6 provides:

2 "The owner shall report to the Board within thirty (30) days of discovery of any loss of the
3 controlled substances, including their amounts and strengths."

4 18. Title 16, California Code of Regulations, section 1718 provides:

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

8 **COST RECOVERY**

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

14 **FACTS SUPPORTING CAUSES FOR DISCIPLINE**

15 20. Tommy Tung Nguyen, RPH (Respondent Nguyen) worked as a pharmacist at Sam's
16 Pharmacy from November 23, 2004 to February 26, 2009 and he was the Pharmacist in Charge
17 from February 7, 2005 to March 5, 2009. On or about February 26, 2009, a Market Manager
18 observed Respondent Nguyen turn off the pharmacy lights, take a product from the shelf, go to
19 the sink and drink water, then return the product to the shelf. When interviewed about the
20 incident, Respondent Nguyen admitted to taking medications from the pharmacy without paying
21 for them.

22 21. Respondent wrote in one statement that:

23 In a period of four years, I took some antihistamine, Xenical, and antibiotics in a
24 total of about 20 times. I did it because I forgot my prescription at home and it is
convenient.

25 22. In another statement, Respondent admitted:

26 In February of 2009, I had a prescription for cephalexin 500 mg from my primary
27 care physician. Into the 3rd day of my treatment I forgot to bring my bottle of
28 medication to work. I had a severe infection and did not want to miss a course of this
antibiotic, so I took 1 capsule from the shelf. Another incident occurred because I
had a severe allergic reaction from the food I ate at lunch. I could have taken a

1 Benadryl, but I knew it would impair my cognitive judgment. I took a tablet of
2 zyrtec. I understand what I did broke the integrity policies, but these were urgent
3 situations...

4 23. In another statement, Respondent admitted:

5 On January 30, 2009, I was prescribed cephalexin by my primary care physician for
6 mouth sores.... Into the 3rd or 4th day of the treatment I forgot to bring my
7 medicine. I used from cephlexin from the pharmacy shelf because I did not want to
8 miss my course. In regard to Xenical, I took it only once. I admit I used Zyrtec most
9 often because I have severe food and seasonal allergies. I thought it was acceptable
10 to use Zyrtec because it is a widely available OTC antihistamine ... I reported to have
11 taking "20 times," they were mainly Zyrtec.

12 24. Respondent possessed a valid prescription for Cephalexin. He did not have a
13 prescription for Xenical.

14 25. On February 26, 2009, Respondent Nguyen was terminated for gross misconduct
15 from the pharmacy.

16 26. Respondent Nguyen had been the Pharmacist in Charge at Sam's Pharmacy from
17 February 7, 2005 to March 5, 2009. N.T., the Pharmacist in Charge of Sam's Pharmacy from
18 April 13, 2009 to the present, reported being unaware of any controlled substances losses at the
19 pharmacy. On April 20, 2009, the Board investigator requested a copy of any audit of the
20 controlled substances at the Pharmacy. The audit results were submitted to the Board investigator
21 on April 28, 2009. The audit reflected that from May 1, 2008, to January 2, 2009, there were
22 losses of two controlled substances at the pharmacy: 30 tablets of Amphetamine Salts 10mg were
23 missing and 136 tablets of APAP with Codiene 30 mg. No DEA-106 Loss Report was filed by
24 the pharmacy.

25 DRUGS

26 27. Amphetamine Salts are dangerous drugs pursuant to section 4022, controlled
27 substances pursuant to Health and Safety Code section 11056(e)(2) which is used to treat
28 Narcolepsy and ADHD.

29 28. Benadryl, generic name Diphenhydramine, is a nonprescription antihistamine.

1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional conduct Against Respondent Sam's Pharmacy for**
3 **Failure to Maintain Security of Dangerous Drugs)**

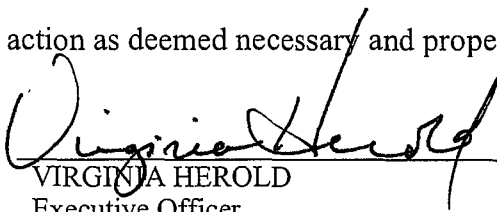
4 37. Respondent Sam's Pharmacy is subject to disciplinary action under Code section
5 4301, subdivisions (j) and (o), for violating title 16, California Code of Regulations, section
6 1714(b) by failing to maintain security of the prescription department, as evidenced by the loss of
7 controlled substances and that the loss was apparently never reported to the Board. The facts
8 supporting this cause are specified in paragraph 26 above and incorporated herein by reference.

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 Pharmacist's License Number RPH 58012, issued to Tommy
13 Tung Nguyen, RPH;
- 14 2. Revoking or suspending Pharmacy Permit Number PHY 44662, issued to Sam's
15 Pharmacy;
- 16 3. Ordering Tommy Tung Nguyen and Sam's Pharmacy to pay the Board of Pharmacy
17 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
18 Professions Code section 125.3;
- 19 4. Taking such other and further action as deemed necessary and proper.

20 DATED: 11/8/10

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

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