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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. 3714

12 **CVS PHARMACY #9849**
13 **8280 Magnolia Avenue**
14 **Riverside, CA 92504**
Original Permit No. PHY 47923,

A C C U S A T I O N

15 **And**

16 **NGUYEN NGUYEN, RPH**
17 **808 Carew Dr.**
18 **Placentia, CA 92870**
Pharmacist License No. 57940

19 Respondents.

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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 September 18, 2006, the Board of Pharmacy issued Pharmacy Permit
26 Number PHY 47923 to CVS Pharmacy #9849 (Respondent CVS). The Pharmacy Permit was in
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1 full force and effect at all times relevant to the charges brought herein and will expire on June 1,
2 2011, unless renewed.

3 3. On or about December 14, 2005, the Board of Pharmacy issued Pharmacist License
4 Number RPH 57940 to Nguyen Nguyen (Respondent Nguyen). The Pharmacist License was in
5 full force and effect at all times relevant to the charges brought herein and will expire on October
6 31, 2011, unless renewed. Respondent Nguyen was the Pharmacist in Charge at CVS from
7 November 22, 2006, to April 18, 2007.

8 JURISDICTION

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

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

16 6. Section 4300, subdivision (a) of the Code states that "Every license issued may be
17 suspended or revoked."

18 7. Section 4032 defines "license" to include any license, permit, registration, certificate,
19 or exemption issued by the board.

20 STATUTORY AUTHORITY

21 8. Section 4022 of the Code states

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

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

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

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

3 9. Section 4081 of the Code states:

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

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

16 10. Section 4113 of the Code states:

17 ". . . .

18 "(c) The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all
19 state and federal laws and regulations pertaining to the practice of pharmacy."

20 11. Section 4156 of the Code states:

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

25 12. Section 4301 of the Code states:

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

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“... ”

“(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.”

13. 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.”

14. 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

15. Title 16, California Code of Regulations, Section 1707.2 provides:

“(a) A pharmacist shall provide oral consultation to his or her patient or the patient's agent in all care settings:

- (1) upon request; or
- (2) whenever the pharmacist deems it warranted in the exercise of his or her professional judgment.

(b)(1) In addition to the obligation to consult set forth in subsection (a), a pharmacist shall provide oral consultation to his or her patient or the patient's agent in any care setting in which the patient or agent is present:

- (A) whenever the prescription drug has not previously been dispensed to a patient; or

1 (B) whenever a prescription drug not previously dispensed to a patient in the same dosage
2 form, strength or with the same written directions, is dispensed by the pharmacy.

3 (2) When the patient or agent is not present (including but not limited to a prescription drug
4 that was shipped by mail) a pharmacy shall ensure that the patient receives written notice: of his
5 or her right to request consultation; and a telephone number from which the patient may obtain
6 oral consultation from a pharmacist who has ready access to the patient's record.”

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

8 “... ”

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

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

14 “The owner shall report to the Board within thirty (30) days of discovery of any loss of the
15 controlled substances, including their amounts and strengths.”

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

17 “‘Current Inventory’ as used in Sections 4081 and 4332 of the Business and Professions
18 Code shall be considered to include complete accountability for all dangerous drugs handled by
19 every licensee enumerated in Sections 4081 and 4332.”

20 **COST RECOVERY**

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

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FACTS SUPPORTING CAUSES FOR DISCIPLINE

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2 20. On February 23, 2009, the Board received an anonymous complaint that a Pharmacy
3 Technician had been convicted in July of 2008 for stealing hundreds of bottles of narcotics from
4 CVS Pharmacy in Riverside with the intent to sell them.

5 21. The Pharmacy Technician was employed by CVS Pharmacy from June 18, 2006 to
6 February 1, 2007. When the Pharmacist in Charge of the Pharmacy at the time, Respondent N.
7 Nguyen, suspected the theft, he reported it to the store's Loss Prevention Staff who installed
8 video cameras and monitored the Pharmacy Technician while she was on duty, catching her in the
9 act of taking the drugs off the shelves. The Pharmacy Technician was arrested and subsequently
10 convicted of embezzlement and possession of controlled substances with the intent to sell.

11 22. The Board's investigation substantiated the allegation against the Technician, who
12 surrendered her license in another action, and found further violations of pharmacy law by CVS
13 Pharmacy and the pharmacists who worked there. Those violations are at issue here.

14 23. CVS could not locate its May 2006 DEA inventory. The results of a Board audit of
15 the CVS DEA narcotics inventory from November 21, 2006 to May 1, 2007 found losses of
16 52,927 hydrocodone 10/325 pills.

17 24. The results of a CVS audit from November 21, 2006 to January 30, 2007, corrected
18 for warehouse purchases that were outside of that range, reflect a loss of 46,323 hydrocodone
19 10/325 pills, likely due to the theft. Given that the Pharmacy Technician subsequently admitted
20 to stealing drugs for nearly the entire time she worked at the pharmacy, it is quite likely that the
21 actual losses were far greater than this amount.

22 25. Although CVS Pharmacy initially reported the theft to the Bureau of Narcotic
23 Enforcement, it does not appear that the Pharmacy inventoried the actual losses from the theft and
24 the losses that were discovered were never reported to the Board.

1 loss of controlled substances to the Board within 30 days the loss. The facts supporting this cause
2 are specified in paragraphs 24-32 above and incorporated herein by reference.

3 PRAYER

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

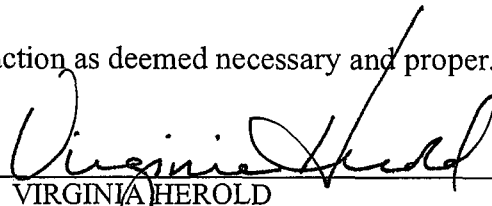
6 1. Revoking or suspending Pharmacy Permit Number PHY 47923, issued to Respondent
7 CVS Pharmacy;

8 2. Revoking or suspending Pharmacist License Number RPH 57940, issued to
9 Respondent N. Nguyen;

10 3. Ordering Respondents to pay the Board of Pharmacy the reasonable costs of the
11 investigation and enforcement of this case, pursuant to Business and Professions Code section
12 125.3;

13 4. Taking such other and further action as deemed necessary and proper.

14 DATED: 11/8/10



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

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