

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SHANA A. BAGLEY
Deputy Attorney General
4 State Bar No. 169423
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2129
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 4183

13 **CASEY TED THONGSAY**
312 Golden Rain Avenue
Fremont, CA 94539

ACCUSATION

14 **Pharmacy Technician Registration No. TCH**
91694

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about June 24, 2009, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 91694 to Casey Ted Thongsay (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought in
24 this Accusation and will expire on May 31, 2013, unless renewed.

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1 **JURISDICTION**

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

5 **STATUTORY PROVISIONS**

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

10 5. Code section 490 provides, in pertinent part, that a board may suspend or revoke a
11 license on the ground that the licensee has been convicted of a crime substantially related to the
12 qualifications, functions, or duties of the business or profession for which the license was issued.

13 6. Code section 493 states:

14 Notwithstanding any other provision of law, in a proceeding conducted by a
15 board within the department pursuant to law to deny an application for a license or to
16 suspend or revoke a license or otherwise take disciplinary action against a person who
17 holds a license, upon the ground that the applicant or the licensee has been convicted
18 of a crime substantially related to the qualifications, functions, and duties of the
19 licensee in question, the record of conviction of the crime shall be conclusive
20 evidence of the fact that the conviction occurred, but only of that fact, and the board
21 may inquire into the circumstances surrounding the commission of the crime in order
22 to fix the degree of discipline or to determine if the conviction is substantially related
23 to the qualifications, functions, and duties of the licensee in question.

24 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
25 'registration.'

26 7. Code section 4300 states, in part:

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

28 (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.

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

2 (4) Revoking his or her license.

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

5 8. Code section 4301 states, in part:

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

9 . . .

10 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
11 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.

12 . . .

13 (l) The conviction of a crime substantially related to the qualifications,
14 functions, and duties of a licensee under this chapter. . . . [T]he record of conviction
15 shall be conclusive evidence only of the fact that the conviction occurred. The board
16 may inquire into the circumstances surrounding the commission of the crime, in order
17 to fix the degree of discipline or, in the case of a conviction not involving controlled
substances or dangerous drugs, to determine if the conviction is of an offense
18 substantially related to the qualifications, functions, and duties of a licensee under this
chapter. A plea or verdict of guilty or a conviction following a plea of nolo
19 contendere is deemed to be a conviction within the meaning of this provision. The
board may take action when the time for appeal has elapsed, or the judgment of
20 conviction has been affirmed on appeal or when an order granting probation is made
suspending the imposition of sentence, irrespective of a subsequent order under
21 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
22 dismissing the accusation, information, or indictment.

23 . . .

REGULATORY PROVISION

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

25 For the purpose of denial, suspension, or revocation of a personal or facility
26 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
27 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
28 it evidences present or potential unfitness of a licensee or registrant to perform the

1 functions authorized by his license or registration in a manner consistent with the
2 public health, safety, or welfare.

3 COST RECOVERY

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

8 FIRST CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct: Substantially Related Conviction) 10 (Bus. & Prof. Code §§ 490 and 4301, subd. (I))

11 11. Respondent's registration is subject to discipline for unprofessional conduct under
12 Code sections 490 and 4301, subdivision (I), in that he was convicted of a crime substantially
13 related to the qualifications, functions, or duties of a pharmacy technician, as defined in Title 16,
14 California Code of Regulations, section 1770, as follows:

15 a. On or about May 13, 2011, in a prior criminal proceeding entitled *People v. Casey*
16 *Ted Thongsay* in Santa Clara County Superior Court, Case Number C1101117, Respondent was
17 convicted of violating Penal Code section 484-487, subdivision (b)(3), (Grand Theft by
18 Employee), a misdemeanor. Respondent was ordered to serve 15 days in county jail, complete
19 one year of informal probation, pay fines and restitution, and to comply with other terms and
20 conditions. The record of the criminal proceeding is incorporated as if fully set forth.

21 b. The factual circumstances underlying the conviction are that on or about December
22 27, 2010, and January 11, 2011, Respondent, while an employee of Macy's Department Store,
23 fraudulently used a customer's store credit account to purchase merchandise and then returned the
24 merchandise in exchange for Macy's gift cards for \$971.23. Respondent and others used some of
25 the gift cards to purchase merchandise and exchanged some gift cards for cash. Respondent
26 admitted this conduct to the arresting officer.

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SECOND CAUSE FOR DISCIPLINE

**(Unprofessional Conduct: Commission of Acts of Dishonesty)
(Bus. & Prof. Code § 4301, subd. (f))**

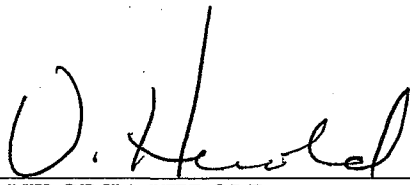
12. Respondent's registration is subject to discipline for unprofessional conduct under Code section 4301, subdivision (f), for committing acts involving moral turpitude, dishonesty, fraud, deceit, or corruption as set forth in Paragraph 11 and its subparts, above.

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 91694, issued to Casey Ted Thongsay;
2. Ordering Casey Ted Thongsay 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
3. Taking such other and further action as deemed necessary and proper.

DATED: 3/19/12



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

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