

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 WILLIAM A. BUSS
Deputy Attorney General
4 State Bar No. 134958
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2039
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12
13 **NATAYA VENUS VONGSIKHAY**
2101 W. Jefferson Street
Banning, CA 92220
14
15 **Pharmacy Technician Registration**
No. TCH 97480
16
17 Respondent.

Case No. 4456

A C C U S A T I O N

18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about December 31, 2009, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 97480 to Nataya Venus Vongsikhay (Respondent) which will expire
24 on November 30, 2013 unless renewed.

25 **JURISDICTION**

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

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

5 5. Section 480 of the Business and Professions Code provides, in pertinent part, that a
6 board may deny a license if the applicant has been convicted of a crime substantially related to
7 the qualifications, functions or duties of the business or profession for which application is made,
8 has committed any act involving dishonesty, fraud or deceit, has committed any act which if done
9 by a licentiate would be grounds for suspension or revocation of a license, or has knowingly made
10 a false statement of fact required to be revealed in the application.

11 6. Section 482 of the Code states:

12 Each board under the provisions of this code shall develop criteria to
13 evaluate the rehabilitation of a person when: (a) Considering the denial of a license by
14 the board under Section 480; or (b) Considering suspension or revocation of a license
15 under Section 490. Each board shall take into account all competent evidence of
16 rehabilitation furnished by the applicant or licensee.

17 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
18 revoke a license on the ground that the licensee has been convicted of a crime substantially
19 related to the qualifications, functions, or duties of the business or profession for which the
20 license was issued.

21 8. Section 493 of the Code states:

22 Notwithstanding any other provision of law, in a proceeding conducted
23 by a board within the department pursuant to law to deny an application for a license
24 or to suspend or revoke a license or otherwise take disciplinary action against a
25 person who holds a license, upon the ground that the applicant or the licensee has
26 been convicted of a crime substantially related to the qualifications, functions, and
27 duties of the licensee in question, the record of conviction of the crime shall be
28 conclusive evidence of the fact that the conviction occurred, but only of that fact, and
29 the board may inquire into the circumstances surrounding the commission of the
30 crime in order to fix the degree of discipline or to determine if the conviction is
31 substantially related to the qualifications, functions, and duties of the licensee in
32 question. As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,'
33 and 'registration.'

34 9. Section 4202 of the Code states in pertinent part: "(d) The board may suspend or
35 revoke a license issued pursuant to this section on any ground specified in Section 4301."

1 10. Section 4300 of the Code states: “(a) Every license issued may be suspended or
2 revoked.”

3 **STATUTORY PROVISIONS**

4 11. Section 4301 of the Code states:

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

8 “...

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

12 “(l) The conviction of a crime substantially related to the qualifications, functions, and
13 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
14 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
15 substances or of a violation of the statutes of this state regulating controlled substances or
16 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
17 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
18 The board may inquire into the circumstances surrounding the commission of the crime, in order
19 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
20 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
21 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
22 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
23 of this provision. The board may take action when the time for appeal has elapsed, or the
24 judgment of conviction has been affirmed on appeal or when an order granting probation is made
25 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
26 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
27 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
28 indictment.”

1 **REGULATORY PROVISIONS**

2 12. The California Code of Regulations, Title 16, section 1769 states in pertinent part:
3 “(b) When considering the suspension or revocation of a facility or a personal license on the
4 ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating
5 the rehabilitation of such person and his present eligibility for a license will consider the
6 following criteria: (1) Nature and severity of the act(s) or offense(s). (2) Total criminal record.
7 (3) The time that has elapsed since commission of the act(s) or offense(s). (4) Whether the
8 licensee has complied with all terms of parole, probation, restitution or any other sanctions
9 lawfully imposed against the licensee. (5) Evidence, if any, of rehabilitation submitted by the
10 licensee.”

11 13. The California Code of Regulations, Title 16, section 1770 states: “For the purpose of
12 denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5
13 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be
14 considered substantially related to the qualifications, functions or duties of a licensee or registrant
15 if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to
16 perform the functions authorized by his license or registration in a manner consistent with the
17 public health, safety, or welfare.”

18 **COST RECOVERY**

19 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
20 administrative law judge to direct a licentiate found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
23 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
24 included in a stipulated settlement.

25 **FIRST CAUSE FOR DISCIPLINE**

26 (July 19, 2012 Criminal Conviction for Petty Theft on March 22, 2012)

27 15. Respondent Nataya Venus Vongsikhay is subject to disciplinary action under sections
28 490 and 4301(f) and (l) in *People of the State of California v. Nataya Venus Vongsikhay*, Superior

1 Court of California, County of Los Angeles case number 2PS91638, in that Respondent pled
2 Nolo Contendere to violation of Penal Code section 484(a): Theft, and was convicted. The
3 circumstances are as follows:

4 16. On or about March 22, 2012, Arcadia Police Department Officer B. Jackson
5 contacted a Loss Prevention Manager at the Victoria's Secret store on Baldwin Avenue in
6 Arcadia. After receiving the report from store personnel, interviewing Respondent, and
7 completing the investigation the officer placed Respondent under arrest and booked Respondent
8 on various charges including PC 459 Commercial Burglary and PC 466 Possession of Burglary
9 Tools.

10 17. On July 19, 2012, Respondent entered a plea of Nolo Contendere to Count One,
11 violation of Penal Code section 484(a) Theft and was sentenced to serve twenty (20) days in
12 County Jail, suspended, Summary Probation for a period of three (3) consecutive years, payment
13 of fines and assessments, and other terms.

14 **DISCIPLINARY CONSIDERATIONS**

15 18. To determine the degree of discipline, if any, to be imposed on Respondent Nataya
16 Venus Vongsikhay, Complainant alleges that on or about March 12, 2012, in a prior action, the
17 Board of Pharmacy issued Citation Number CI 2011 49853 and ordered Respondent to pay a fine
18 of \$1,000.00. The basis for the citation was Respondent's arrest on September 28, 2011, by
19 Ontario Police Department personnel after contacting Loss Prevention Personnel at Hennes &
20 Mauritz store at the Ontario Mills Mall concerning allegations that Respondent and another
21 violated PC section 496(a) Receiving Stolen Property. That arrest resulted in Respondent's
22 conviction by pleas of Guilty as to violation of PC 459 Theft, a misdemeanor and violation of PC
23 484(a) Petty Theft, a misdemeanor in the case *People v. Nataya Venus Vongsikhay*, San
24 Bernardino County Superior Court case number MWV 1104237. For that conviction, judgment
25 was withheld and Respondent was sentenced to Conditional and Revocable Release for twenty
26 four (24) months along with other terms. That Citation is now final and is incorporated by
27 reference as if fully set forth.

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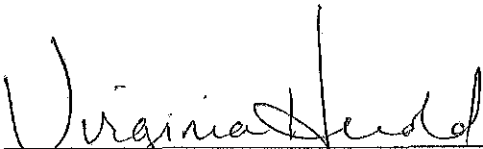
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PRAYER

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 97480, issued to Nataya Venus Vongsikhay;
2. Ordering Nataya Venus Vongsikhay 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: 2/12/13



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

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