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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. 4659

12 **MICHAEL QUOC BAU HO**
13 **1753 Cape Coral Drive**
14 **San Jose, CA 95133**

A C C U S A T I O N

15 **Pharmacy Technician Registration No.**
16 **20393**

Respondent.

17
18
19 Complainant alleges:

20 PARTIES

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

23 2. On or about October 2, 1996, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number 20393 to Michael Quoc Bau Ho (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought in this
26 Accusation and will expire on February 28, 2014, unless renewed.

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.

3 . . .

4 “(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the
5 board.”

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

10 8. Section 492 of the Code states:

11 “Notwithstanding any other provision of law, successful completion of any diversion
12 program under the Penal Code, or successful completion of an alcohol and drug problem
13 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
14 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
15 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
16 division, from taking disciplinary action against a licensee or from denying a license for
17 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
18 record pertaining to an arrest.

19 “This section shall not be construed to apply to any drug diversion program operated by any
20 agency established under Division 2 (commencing with Section 500) of this code, or any
21 initiative act referred to in that division.”

22 9. Section 493 of the Code states:

23 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
24 the department pursuant to law to deny an application for a license or to suspend or revoke a
25 license or otherwise take disciplinary action against a person who holds a license, upon the
26 ground that the applicant or the licensee has been convicted of a crime substantially related to the
27 qualifications, functions, and duties of the licensee in question, the record of conviction of the
28 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of the crime in
2 order to fix the degree of discipline or to determine if the conviction is substantially related to the
3 qualifications, functions, and duties of the licensee in question.

4 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
5 'registration.'"

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

11 11. Section 4060 of the Code states, in relevant part:

12 "No person shall possess any controlled substance, except that furnished to a person upon
13 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
14 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
15 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician
16 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
17 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the
18 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
19 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-
20 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled
21 with the name and address of the supplier or producer."

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

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

CONTROLLED SUBSTANCES/DANGEROUS DRUGS

1 13. Section 4021 of the Code states:

2 “Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
3 11053) of Division 10 of the Health and Safety Code.”

4 14. Section 4022 of the Code states:

5 “Dangerous drug” or “dangerous device” means any drug or device unsafe for self-use in
6 humans or animals, and includes the following:

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

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

12 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
13 prescription or furnished pursuant to Section 4006.”

14 15. Health and Safety Code section 11352, subdivision (a), states:

15 “(a) Except as otherwise provided in this division, every person who transports, imports
16 into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this
17 state, sell, furnish, administer, or give away, or attempts to import into this state or transport (1)
18 any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision
19 (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section
20 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of
21 Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a
22 narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or
23 veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to
24 subdivision (h) of Section 1170 of the Penal Code for three, four, or five years.”

25 16. Hydrocodone Bitartrate is a Schedule III controlled substance as designated by Health
26 and Safety Code section 11056, subdivision (e)(4), and a dangerous drug as designated by
27 Business and Professions Code section 4022.

28

1 of time. Furthermore, Respondent admitted to the officers that he made a total of \$900 from
2 dealing the stolen pills in the past 3 months and that the \$600, found in his car, were proceeds
3 from selling Xanax.

4 22. MVPD initially charged Respondent with three felonies: 1) transporting, selling or
5 distributing a controlled substance (a violation of Health and Safety Code section 11352,
6 subdivision (a)), 2) possessing controlled substance for the purpose of selling (a violation of
7 Health and Safety Code section 11351) and 3) embezzling property of more than \$950.00 in value
8 (a violation of Penal Code section 504-487).

9 **FIRST CAUSE FOR DISCIPLINE**
10 **(Unprofessional Conduct: Substantially Related Conviction)**
11 **(Bus. & Prof Code §§ 490 & 4301, subd. (I))**

12 23. Respondent has subjected his Pharmacy Technician license to disciplinary action
13 under Code sections 490 and 4301, subdivision (I), in that he was convicted of a crime
14 substantially related to the qualifications, functions and duties of a pharmacy technician. The
15 circumstances are as follows:

16 24. On or about January 15, 2013, in a criminal matter entitled *The People of the State of*
17 *California v. Michael Bay Ho*, Santa Clara County Superior Court Case No. C1242008,
18 Respondent was convicted by a plea of nolo contendere for violating two felonies: Health &
19 Safety Code section 11352, subdivision (a), (transporting, selling, or distributing controlled
20 substances), and Penal Code section 504-487, (embezzlement by employee). The court dismissed
21 the charge of possession of controlled substance for the purpose of sale in the interest of justice.
22 The court sentenced Respondent to serve 1 year in county jail and 3 years of formal probation,
23 and ordered him to comply with other terms and conditions. The circumstances that support the
24 conviction are as described by paragraphs 19-22, above.

25 **SECOND CAUSE FOR DISCIPLINE**
26 **(Furnishing Dangerous Drugs w/o Valid Prescription)**
27 **(Bus. & Prof Code § 4059)**

28 25. Respondent has subjected his Pharmacy Technician license to disciplinary action
under Code section 4059, in that he furnished dangerous drugs (Hydrocodone Bitartrate &

1 Alprazolam) without a valid prescription. The circumstances are set forth in paragraphs 19-22,
2 above.

3 **THIRD CAUSE FOR DISCIPLINE**
4 **(Illegal Possession of Controlled Substances)**
5 **(Bus. & Prof Code § 4060)**

6 26. Respondent has subjected his Pharmacy Technician license to disciplinary action
7 under Code section 4060, in that he possessed controlled substance (Hydrocodone Bitartrate)
8 without a valid prescription. The circumstances are set forth in paragraphs 19-22, above.

9 **FOURTH CAUSE FOR DISCIPLINE**
10 **(Unprofessional Conduct: Acts of Dishonesty and Fraud)**
11 **(Bus. & Prof. Code § 4301, subd. (f))**

12 27. Respondent has subjected his Pharmacy Technician license to disciplinary action
13 under Code section 4301, subdivision (f), in that he acted dishonestly when he stole 1,100 tablets
14 of Hydrocodone Bitartrate while working as a pharmacy technician at SVPS. The circumstances
15 are set forth in paragraphs 19-22, above.

16 **FIFTH CAUSE FOR DISCIPLINE**
17 **(Violation of Statutes Regarding Controlled Substances)**
18 **(Bus. & Prof. Code § 4301, subd. (j))**

19 28. Respondent has subjected his Pharmacy Technician License to disciplinary action
20 under Code section 4301, subdivision (j), in that he sold controlled substances (Hydrocodone
21 Bitartrate) without a valid prescription. Such actions violate California Statutes relating to
22 controlled substances and dangerous drugs, including, but not limited to, Health and Safety Code
23 11352, subdivision (a). The circumstances are explained in paragraphs 19-22, above.

24 **SIXTH CAUSE FOR DISCIPLINE**
25 **(Subversion of Board Investigation)**
26 **(Bus. & Prof. Code § 4301 (q))**

27 29. Respondent has subjected his Pharmacy Technician License to disciplinary action
28 under Code section 4301, subdivision (q), in that he failed to comply with the Board's
investigation into the matters alleged in this Accusation. The circumstances are as follows:

30. On or about January 14, 2013, an inspector for the Board (inspector) sent a letter to
Respondent's address of record—1753 Cape Coral Drive in San Jose, California 95113—
requesting a meeting with him to discuss the incident of September 6, 2012. A second letter was

1 sent to Respondent at 2154 Commodore Dr., San Jose, California 95113 (an address provided by
2 SVSP) on January 24, 2013, requesting a meeting. The same letter was sent via email to
3 Respondent at an email address provided by SVSP. On or about February 1, 2013, the inspector
4 sent another letter to Respondent with a similar request. Finally, on or about February 5, 2013,
5 the inspector sent another letter via email to Respondent seeking a meeting in regards to the
6 incident on September 6, 2012. Respondent failed to respond to any of these three letters or the
7 two emails sent to him.

8 DISCIPLINE CONSIDERATIONS


9 31. To determine the degree of discipline, if any, to be imposed on Respondent,
10 Complainant alleges that on or about December 22, 2004, in a prior action, the Board of
11 Pharmacy issued Citation Number CI 200327039 and ordered Respondent to pay a \$1,000 fine
12 for violating sections 1770 and 4301, subdivisions (f), (g), (l), and (p). That Citation is now final
13 and is incorporated by reference as if fully set forth.

14 PRAYER

15 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
16 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

- 17 1. Revoking or suspending Pharmacy Technician Registration Number 20393, issued to
18 Michael Quoc Bau Ho;
- 19 2. Ordering Michael Quoc Bau Ho to pay the Board of Pharmacy the reasonable costs of
20 the investigation and enforcement of this case, pursuant to Business and Professions Code section
21 125.3;
- 22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: 7/22/13


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

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