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

11 In the Matter of the Accusation Against:

Case No. 4791

12 **JONATHAN NGUYEN**  
13 **21011 Kausch Circle**  
14 **Huntington Beach, CA 92646**

**A C C U S A T I O N**

15 **Pharmacy Technician Registration No. TCH**  
**79791**

16 Respondent.

17  
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 17, 2007, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 79791 to Jonathan Nguyen (Respondent). The Pharmacy Technician  
24 Registration expired on June 30, 2013, and has not been 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 (Code) otherwise indicated.

1           4.     Section 4300, subdivision (a) of the Code states "Every license issued may be  
2 suspended or revoked."

3           5.     Section 4300.1 of the Code states:

4                     The expiration, cancellation, forfeiture, or suspension of a board-issued  
5 license by operation of law or by order or decision of the board or a court of law, the  
6 placement of a license on a retired status, or the voluntary surrender of a license by a  
7 licensee shall not deprive the board of jurisdiction to commence or proceed with any  
8 investigation of, or action or disciplinary proceeding against, the licensee or to render  
9 a decision suspending or revoking the license.

10          6.     Section 4301 of the Code states:

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

15                     ....

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

19                     ....

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

22                     ....

23                     (o) Violating or attempting to violate, directly or indirectly, or assisting in  
24 or abetting the violation of or conspiring to violate any provision or term of this  
25 chapter or of the applicable federal and state laws and regulations governing  
26 pharmacy, including regulations established by the board or by any other state or  
27 federal regulatory agency.

28          7.     Section 4022 of the Code states

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

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

                   (b) Any device that bears the statement: "Caution: federal law restricts  
this device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of  
similar import, the blank to be filled 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  
2 dispensed only on prescription or furnished pursuant to Section 4006.

3 8. Section 4059 of the Code states, in pertinent part, that a person may not furnish any  
4 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,  
5 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

6 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any  
7 controlled substance, except that furnished to a person upon the prescription of a physician,  
8 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

9 10. United States Code, title 21, section 843 states, in pertinent part:

10 (a) It shall be unlawful for any person knowingly or intentionally –

11 . . . .

12 (3) to acquire or obtain possession of a controlled substance by  
13 misrepresentation, fraud, forgery, deception, or subterfuge;

14 . . . .

#### 15 COSTS

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

#### 22 DRUGS

23 12. Hydrocodone bitartate/acetaminophen, also known by the brand names Vicodin,  
24 Norco, Zydone, Maxidone, Lortab, Lorcet, Hydrocet, Co-Gesic, and Anexsia, is a narcotic  
25 Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4),  
26 and is a dangerous drug pursuant to Business and Professions Code section 4022. Hydrocodone is  
27 used as a narcotic analgesic in the relief of pain.  
28

1 13. Promethazine with Codeine, also known by the brand name Phenergan with Codeine,  
2 is a narcotic Schedule 5 controlled substance designated by Health and Safety Code section  
3 11058(C)(1), and is a dangerous drug pursuant to Business and Professions Code section 4022.  
4 Promethazine with Codeine is used to treat coughs.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Commission of Acts Involving Dishonesty, Fraud, Deceit & Corruption)**

7 14. Respondent has subjected his registration to discipline under section 4301,  
8 subdivision (f) of the Code for unprofessional conduct in that Respondent stole controlled  
9 substances and dangerous drugs from his employer/pharmacy using fraud, deceit, and dishonesty  
10 as follows.

11 a. On January 27, 2012, while working as a Pharmacy Technician at Vons  
12 Pharmacy (PHY 43066) in Huntington Beach, California, Respondent was videotaped hiding a  
13 bottle of Promethazine with Codeine under paper in the recycling bin and then exiting the  
14 pharmacy with the medication.

15 b. Respondent admitted to loss prevention staff at the Pharmacy that in December  
16 of 2011 he had stolen two containers of hydrocodone/ APAP for personal use, but claimed to have  
17 returned the narcotics to the store.

18 c. Respondent admitted to loss prevention staff at the Pharmacy that he had  
19 previously stolen one acne cream from the pharmacy.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Violation of California Statutes Regulating Controlled Substances)**

22 15. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the  
23 Code for unprofessional conduct in that Respondent knowingly violated Business and Professions  
24 Code sections 4022, 4059, and 4060, as described in paragraph 14, above.

25 **THIRD CAUSE FOR DISCIPLINE**

26 **(Violating Federal Laws Governing Pharmacy)**

27 16. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the  
28 Code for unprofessional conduct in that Respondent violated Title 21 U.S.C. section 843.

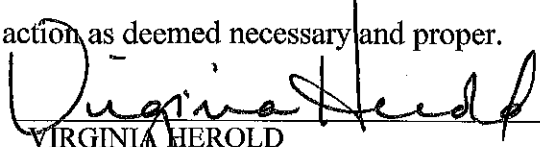
1 subdivision (a)(3) when he obtained controlled substances using fraud and deceit, as described in  
2 paragraph 14, above.

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 Technician Registration Number TCH 79791,  
7 issued to Jonathan Nguyen;
- 8 2. Ordering Jonathan Nguyen to pay the Board of Pharmacy the reasonable costs of the  
9 investigation and enforcement of this case, pursuant to Business and Professions Code section  
10 125.3;
- 11 3. Taking such other and further action as deemed necessary and proper.

12 DATED: 2/19/14



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

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