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7

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

10 In the Matter of the Accusation Against:

Case No. 5065

11 **C N HEALTH INC., DBA MEDNIK**
12 **PHARMACY AND MEDICAL SUPPLIES;**
13 **DAT MINH CHAU**
609 N. Mednik Ave.
14 Los Angeles, CA 90022

ACCUSATION

15 **Permit No. PHY 48538,**

16 **and**

17 **DAT MINH CHAU**
985 S. Glendora Ave
18 West Covina, CA 91790

19 **Pharmacist License No. RPH 52325**

20 Respondent.

21 Complainant alleges:

22 **PARTIES**

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

25 2. On or about August 23, 2007, the Board of Pharmacy issued Permit Number PHY
26 48538 to C N Health Inc., dba Mednik Pharmacy and Medical Supplies; Dat Minh Chau
27 (Respondents). The Permit was cancelled on June 20, 2012.
28

1 3. On or about March 27, 2001, the Board of Pharmacy issued Pharmacist License
2 Number RPH 52325 to Dat Minh Chau (Respondent). The Pharmacist License was in full force
3 and effect at all times relevant to the charges brought herein and will expire on November 30,
4 2018, unless renewed.

5 **JURISDICTION**

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

9 5. Section 4300 of the Code states:

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

11 "..."

12 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
13 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
14 shall have all the powers granted therein. The action shall be final, except that the propriety of the
15 action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil
16 Procedure."

17 6. Section 4300.1 of the Code states:

18 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation
19 of law or by order or decision of the board or a court of law, the placement of a license on a
20 retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of
21 jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding
22 against, the licensee or to render a decision suspending or revoking the license."

23 7. Section 4301 of the Code states:

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

27 "(a) Procurement of a license by fraud or misrepresentation.

28 "(b) Incompetence.

1 “(c) Gross negligence.

2 “(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a)
3 of Section 11153 of the Health and Safety Code.

4 “(e) The clearly excessive furnishing of controlled substances in violation of subdivision (a)
5 of Section 11153.5 of the Health and Safety Code. Factors to be considered in determining
6 whether the furnishing of controlled substances is clearly excessive shall include, but not be limited
7 to, the amount of controlled substances furnished, the previous ordering pattern of the customer
8 (including size and frequency of orders), the type and size of the customer, and where and to
9 whom the customer distributes its product.

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

13 “(g) Knowingly making or signing any certificate or other document that falsely represents
14 the existence or nonexistence of a state of facts.

15 “(h) The administering to oneself, of any controlled substance, or the use of any dangerous
16 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
17 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
18 to the extent that the use impairs the ability of the person to conduct with safety to the public the
19 practice authorized by the license.

20 “(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or
21 administering, or offering to sell, furnish, give away, or administer, any controlled substance to an
22 addict.

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

25 “(k) The conviction of more than one misdemeanor or any felony involving the use,
26 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
27 combination of those substances.

28

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

17 “(m) The cash compromise of a charge of violation of Chapter 13 (commencing with Section
18 801) of Title 21 of the United States Code regulating controlled substances or of Chapter 7
19 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code
20 relating to the Medi-Cal program.

21 “(n) The revocation, suspension, or other discipline by another state of a license to practice
22 pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter
23 that would be grounds for revocation, suspension, or other discipline under this chapter. Any
24 disciplinary action taken by the board pursuant to this section shall be coterminous with action
25 taken by another state, except that the term of any discipline taken by the board may exceed that of
26 another state, consistent with the board’s enforcement guidelines. The evidence of discipline by
27 another state is conclusive proof of unprofessional conduct.

28

1 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
2 violation of or conspiring to violate any provision or term of this chapter or of the applicable
3 federal and state laws and regulations governing pharmacy, including regulations established by the
4 board or by any other state or federal regulatory agency.

5 “(p) Actions or conduct that would have warranted denial of a license.

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

8 “(r) The selling, trading, transferring, or furnishing of drugs obtained pursuant to Section
9 256b of Title 42 of the United States Code to any person a licensee knows or reasonably should
10 have known, not to be a patient of a covered entity, as defined in paragraph (4) of subsection (a)
11 of Section 256b of Title 42 of the United States Code.

12 “(s) The clearly excessive furnishing of dangerous drugs by a wholesaler to a pharmacy that
13 primarily or solely dispenses prescription drugs to patients of long-term care facilities. Factors to
14 be considered in determining whether the furnishing of dangerous drugs is clearly excessive shall
15 include, but not be limited to, the amount of dangerous drugs furnished to a pharmacy that
16 primarily or solely dispenses prescription drugs to patients of long-term care facilities, the previous
17 ordering pattern of the pharmacy, and the general patient population to whom the pharmacy
18 distributes the dangerous drugs. That a wholesaler has established, and employs, a tracking system
19 that complies with the requirements of subdivision (b) of Section 4164 shall be considered in
20 determining whether there has been a violation of this subdivision. This provision shall not be
21 interpreted to require a wholesaler to obtain personal medical information or be authorized to
22 permit a wholesaler to have access to personal medical information except as otherwise authorized
23 by Section 56 and following of the Civil Code. For purposes of this section, “long-term care
24 facility” shall have the same meaning given the term in Section 1418 of the Health and Safety
25 Code.”

26 8. Section 4307 of the Code states:

27 “Individuals with Denied, Revoked, Suspended, etc. Licenses Prohibited From Pharmacy
28 Ownership or Association with Board Licensed Entities”

1 “(a) Any person who has been denied a license or whose license has been revoked or is
2 under suspension, or who has failed to renew his or her license while it was under suspension, or
3 who has been a manager, administrator, owner, member, officer, director, associate, or partner of
4 any partnership, corporation, firm, or association whose application for a license has been denied
5 or revoked, is under suspension or has been placed on probation, and while acting as the manager,
6 administrator, owner, member, officer, director, associate, partner, or any other position with
7 management or control had knowledge of or knowingly participated in any conduct for which the
8 license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving
9 as a manager, administrator, owner, member, officer, director, associate, partner, or in any other
10 position with management or control of a licensee as follows:

11 “(1) Where a probationary license is issued or where an existing license is placed on
12 probation, this prohibition shall remain in effect for a period not to exceed five years.

13 “(2) Where the license is denied or revoked, the prohibition shall continue until the license is
14 issued or reinstated.

15 “(b) "Manager, administrator, owner, member, officer, director, associate, or partner," as
16 used in this section and Section 4308, may refer to a pharmacist or to any other person who serves
17 in that capacity in or for a licensee.

18 “(c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to
19 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code.
20 However, no order may be issued in that case except as to a person who is named in the caption,
21 as to whom the pleading alleges the applicability of this section, and where the person has been
22 given notice of the proceeding as required by Chapter 5 (commencing with Section 11500) of Part
23 1 of Division 3 of the Government Code. The authority to proceed as provided by this subdivision
24 shall be in addition to the board's authority to proceed under Section 4339 or any other provision
25 of law.”

26 9. Section 4081 subdivision (a) of the Code states:

27 “(a) All records of manufacture and of sale, acquisition, receipt, shipment, or disposition of
28 dangerous drugs or dangerous devices shall be at all times during business hours open to

1 inspection by authorized officers of the law, and shall be preserved for at least three years from the
2 date of making. A current inventory shall be kept by every manufacturer, wholesaler, third-party
3 logistics provider, pharmacy, veterinary food-animal drug retailer, outsourcing facility, physician,
4 dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a
5 currently valid and unrevoked certificate, license, permit, registration, or exemption under Division
6 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing
7 with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of
8 dangerous drugs or dangerous devices.

9 “...”

10 10. Section 4105 subdivision (a) of the Code states:

11 “(a) (a) All records or other documentation of the acquisition and disposition of dangerous
12 drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed
13 premises in a readily retrievable form.

14 “....”

15 REGULATIONS

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

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

23 12. California Code of Regulations, title 16, Section 1761 states:

24 “(a) No pharmacist shall compound or dispense any prescription which contains any
25 significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any
26 such prescription, the pharmacist shall contact the prescriber to obtain the information needed to
27 validate the prescription.

1 “(b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense
 2 a controlled substance prescription where the pharmacist knows or has objective reason to know
 3 that said prescription was not issued for a legitimate medical purpose.”

4 **COST RECOVERY**

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

9 **DEFINITIONS**

10

11 BRAND NAME	12 GENERIC NAME	13 DANGEROUS DRUG PER B & PC 4022	14 CONTROLLED SUBSTANCE PER H & SC	15 INDICATIONS FOR USE
16 Vicodin ES	17 Hydrocodone/ acetaminophen 7.5/750	18 Yes	Yes HSC 11056 (e)(5)	Pain
Tylenol #3, Tylenol #4	Acetaminophen/ codeine	Yes	Yes HSC11056(e)(2)	Pain
Valium	Diazepam 10mg	Yes	Yes HSC- 11057(d)(9)	Anxiety
Klonopin	Clonazepam 2mg	Yes	Yes HSC- 11057(d)(7)	Anxiety
Xanax	Alprazolam 2mg	Yes	Yes HSC- 11057(d)(1)	Anxiety

19 **FIRST CAUSE FOR DISCIPLINE**

20 (Erroneous or Uncertain Prescriptions)

21 14. Respondents are subject to disciplinary action under California Code of Regulations,
 22 title 16, section 1761, subdivision (a) and (b) in that Respondents dispensed prescriptions which
 23 contained significant errors, omissions, irregularities, uncertainties, ambiguities or alterations,
 24 without contacting the prescriber to obtain the information needed to validate the prescription.

25 15. The circumstances surrounding this violation are such that on or about June 19, 2012,
 26 the Board received a complaint from L.N.¹ of Wellpoint, which stated that during an audit of

27 ¹ Initials are used in lieu of real names in order to protect the privacy rights of those
 28 (continued...)

1 Respondent Mednik Pharmacy, they found packs of blank prescription pads for 2 prescribers and
2 one dentist in the pharmacy. Prescriptions pads found were for Dr. H., Dr. T. and Dr. F. While no
3 prescription pads were found for Dr. B, Respondents were found to be dispensing an unusually
4 high number of prescriptions for Dr. B., who was a high prescriber of narcotic analgesics, muscle
5 relaxants and tranquilizers.

6 16. The Board commenced an investigation revealing that between January 1, 2009
7 through August 16, 2012, Respondents dispensed 12,487 prescriptions for controlled substances
8 prescribed by Dr. B, which was approximately 70% of Dr. B.'s overall prescriptions. Respondents
9 dispensed erroneous and/or uncertain prescriptions for controlled substances for Dr. B.'s patients
10 whereby most of the patients received questionable prescriptions containing the same drugs,
11 quantities, and directions without any individualized treatment plan, as well as therapy duplications
12 and excessive dosages. Specifically, patients received dosages over the recommended amounts for
13 acetaminophen, in addition to therapeutic duplication of two drugs containing acetaminophen. For
14 example, many patients were prescribed hydrocodone with acetaminophen and codeine with
15 acetaminophen, both of which contain acetaminophen and would be counterintuitive to prescribe
16 together. Patients also received therapy duplication of anti-anxiety agents. For example, many
17 patients were prescribed clonazepam and diazepam simultaneously, both of which are
18 benzodiazepines and are within the same class of drugs, used to treat the same conditions.

19 **SECOND CAUSE FOR DISCIPLINE**

20 (Unprofessional Conduct)

21 17. Respondents are subject to disciplinary action under section 4301, which states the
22 board shall take action against any holder of a license that is guilty of unprofessional conduct
23 which shall include gross immaturity, incompetence, gross negligence, clearly excessive furnishing
24 of controlled substances, etc. The circumstances surrounding this violation are set forth above in
25 paragraphs 14 and 16, and are incorporated herein as though set forth in full.

26 **THIRD CAUSE FOR DISCIPLINE**

27 (...continued)
28 individuals.

(Failure to Maintain Records)

18. Respondents are subject to disciplinary action under sections 4081 (a) which requires a pharmacy to account for the records of acquisition and disposition of the current inventory, and 4105 subdivisions (a) which requires that all records or other documentation of the acquisition and disposition of dangerous drugs and dangerous devices by any entity licensed by the board be retained on the licensed premises in a readily retrievable form. Specifically, Respondents did not preserve the required records for three (3) years when they sold the pharmacy to Walgreens.

OTHER MATTERS

19. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number PHY 48538, issued to CN Health Inc., dba Mednik Pharmacy and Medical Supplies (CN Health), CN Health Inc shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if PHY 48538, issued to CN Health is placed on probation or until PHY 48538, issued to CN Health is reinstated if it is revoked.

20. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number PHY 48538, issued to CN Health Inc., dba Mednik Pharmacy and Medical Supplies (CN Health), while Dat Minh Chau (Chau) has been an officer and owner and had had knowledge of or knowingly participated in any conduct for which the licensee was disciplined, Chau shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if PHY 48538, issued to CN Health is placed on probation or until PHY 48538, issued to CN Health is reinstated if it is revoked.

21. Pursuant to Code section 4307, if discipline is imposed on Pharmacy license RPH 52325 issued to Dat Minh Chau (Chau), Chau shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee for five years if RPH 52325 is placed on probation or until RPH 52325 is reinstated if it is revoked.

PRAYER

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

3 1. Revoking or suspending Permit Number PHY 48538, issued to C N Health Inc., dba
4 Mednik Pharmacy and Medical Supplies; Dat Minh Chau, Jacinto Nuno;

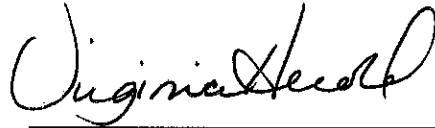
5 2. Revoking or suspending Pharmacist License Number RPH 52325, issued to Dat Minh
6 Chau;

7 3. Prohibiting Dat Minh Chau from serving as a manager, administrator, owner, member,
8 officer, director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY
9 48538, issued to CN Health Inc., dba Mednik Pharmacy and Medical Supplies is placed on
10 probation or until Pharmacy Permit Number PHY 48538, issued to CN Health Inc., dba Mednik
11 Pharmacy and Medical Supplies is reinstated if Pharmacy Permit Number PHY 48538, issued to
12 CN Health Inc., dba Mednik Pharmacy and Medical Supplies issued is revoked;

13 3. Ordering Mednik Pharmacy and Medical Supplies and Dat Minh Chau to pay the
14 Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant
15 to Business and Professions Code section 125.3; and,

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

17
18 DATED: 10/26/17



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

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