

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 5112

13 **SHIAO-EN YUSEF LEE**
14 **7966 Camino Tranquilo**
San Diego, CA 92122

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 122019**

17 Respondent.

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 March 22, 2012, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 122019 to Shiao-En Yusef Lee (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on October 31, 2015, unless renewed.

27 ///

28 ///

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 (Code) unless otherwise indicated.

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

7 5. Section 4300.1 of the Code states:

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

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states:

14 Each board under the provisions of this code shall develop criteria to evaluate the
15 rehabilitation of a person when:

16 (a) Considering the denial of a license by the board under Section 480; or

17 (b) Considering suspension or revocation of a license under Section 490.

18 Each board shall take into account all competent evidence of rehabilitation
19 furnished by the applicant or licensee.

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

24 8. Section 493 of the Code states:

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

1 discipline or to determine if the conviction is substantially related to the qualifications,
2 functions, and duties of the licensee in question.

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

5 9. Section 4301 of the Code states:

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 misrepresentation
8 or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of
9 the following:

10

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

14

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

17

18 (l) The conviction of a crime substantially related to the qualifications, functions,
19 and duties of a licensee under this chapter. The record of conviction of a violation of
20 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
21 regulating controlled substances or of a violation of the statutes of this state regulating
22 controlled substances or dangerous drugs shall be conclusive evidence of unprofessional
23 conduct. In all other cases, the record of conviction shall be conclusive evidence only of
24 the fact that the conviction occurred. The board may inquire into the circumstances
25 surrounding the commission of the crime, in order to fix the degree of discipline or, in
26 the case of a conviction not involving controlled substances or dangerous drugs, to
27 determine if the conviction is of an offense substantially related to the qualifications,
28 functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a
conviction following a plea of nolo 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 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 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 dismissing the accusation, information, or indictment.

. . . .

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

. . . .

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10. 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.

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

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

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

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

....

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

....

REGULATORY PROVISIONS

13. California Code of Regulations, title 16, section 1769, states:

....

(b) When considering the suspension or revocation of a facility or a personal License on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

6 COSTS

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

13 DRUG

14 16. Ecstasy, the street name for 3,4-methylenedioxymethamphetamine (MDMA), is a
15 Schedule I controlled substance pursuant to California Health and Safety Code section 11054,
16 subdivision (d)(4), and is classified as a dangerous drug pursuant to Business and Professions
17 Code section 4022.

18 17. Hydrocodone bitartate/acetaminophen (APAP), sold under the brand name Norco, is a
19 Schedule III controlled substance as designated by Health and Safety Code section 11056,
20 subdivision (e)(4), and is a dangerous drug pursuant to Business and Professions Code section
21 4022.

22 COSTS

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

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(November 27, 2012 Criminal Convictions for**

3 **Possession of a Controlled Substance for Sale & Burglary)**

4 19. Respondent has subjected his registration to discipline under sections 490 and 4301,
5 subdivision (l) of the Code in that he was convicted of crimes that are substantially related to the
6 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

7 a. On or about November 27, 2012, in a criminal proceeding entitled *People of the*
8 *State of California v. Shiaoen Yusef Lee*, in San Diego County Superior Court, case number
9 CD243748, Respondent was convicted on his plea of guilty to violating Health and Safety Code
10 section 11378, possession for sale of a controlled substance, to wit, MDMA or Ecstasy; and Penal
11 Code section 459, burglary, felonies. Pursuant to Respondent's plea agreement, the court
12 dismissed additional counts of possession of hydrocodone for sale (Health & Saf. Code, § 11351),
13 and grand theft of personal property (Pen. Code, § 487(a)).

14 b. As a result of the convictions, on or about November 27, 2012, Respondent was
15 sentenced to 180 days in jail, stayed, pending successful completion of three years formal
16 probation. Respondent was ordered to perform 20 days of community service, register as a drug
17 offender, pay fees, fines and restitution, and comply with the terms of probation, which included
18 a Fourth Amendment waiver, and a stay away order for CVS.

19 c. The facts that led to the convictions are that on or about September 26, 2012,
20 the Drug Enforcement Agency's Tactical Diversion Squad (TDS) in San Diego was contacted by
21 the regional loss prevention manager for CVS Pharmacy. The loss prevention manager reported
22 that Respondent, who had been employed for 11 months at a Solana Beach CVS, prepared a
23 statement and signed a promissory note wherein he admitted stealing alprazolam and
24 hydrocodone from the pharmacy. On October 3, 2012, the TDS agents met with the loss
25 prevention manager at the CVS Pharmacy where they arrested Respondent, then conducted a
26 consensual interview. Respondent claimed that he met "Jessie" on Facebook. Respondent agreed
27 to provide Jessie with Xanax (alprazolam) and hydrocodone in exchange for money. Respondent
28 stated he would take one bottle (100 count) at a time from the pharmacy, and that he took a total

1 of six bottles of Xanax. Respondent would place the bottles in his pocket and walk out of the
2 store, then deliver them to Jessie. Respondent stated that the last time he stole was when he took
3 a bottle of 100 tablets of hydrocodone APAP approximately three weeks earlier, and that he sold
4 the tablets for \$2.00 each. Respondent signed a consent to search. The TDS entered
5 Respondent's residence and took custody of 13 tablets of hydrocodone and 12 tablets of Ecstasy.
6 In a February 19, 2013 written statement provided to a Board investigator, Respondent admitted
7 that he took the drugs for self-use, that he had become addicted, and that his story about selling
8 the drugs to "Jessie" was a fabrication .

9 **SECOND CAUSE FOR DISCIPLINE**

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

11 20. Respondent has subjected his registration to discipline under section 4301,
12 subdivision (f) of the Code for unprofessional conduct in that on or between June 1, 2012 and
13 October 3, 2012, Respondent obtained controlled substances from his employer/pharmacy using
14 fraud, deceit, and dishonesty, as described in paragraph 19, above.

15 **THIRD CAUSE FOR DISCIPLINE**

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

17 21. Respondent has subjected his registration to discipline under section 4301,
18 subdivision (j) of the Code for unprofessional conduct in that on or between June 1, 2012 and
19 October 3, 2012, Respondent knowingly violated Business and Professions Code sections 4022,
20 4059, and 4060, and Health and Safety Code section 11378, as described in paragraph 19, above.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Violation of Federal & State Laws & Regulations Governing Pharmacy)**

23 22. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the
24 Code for unprofessional conduct in that on or between June 1, 2012 and October 3, 2012,
25 Respondent violated Title 21 U.S.C. section 843, subdivision (a)(3), Board of Pharmacy
26 Regulations (California Code of Regulations, Title 16, Section 1700, et seq.), and the California
27 Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.), when he obtained
28 controlled substances using fraud and deceit, as described in paragraph 19, above.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

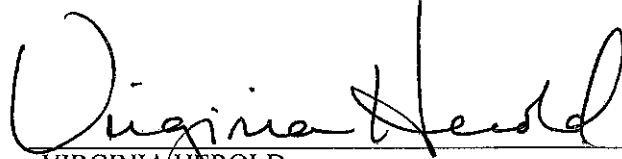
PRAYER

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 122019, issued to Shiao-En Yusef Lee;
2. Ordering Shiao-En Yusef Lee 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: _____

6/14/14



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

SD2014706693