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8	BEFORE THE	
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS	
10	STATE OF CALIFORNIA	
11		CI N. 5000
12	In the Matter of the Accusation Against:	Case No. 5299
13	CVS VANGUARD, INC., DBA CVS PHARMACY NO. 5837	
14	7065 La Palma Avenue Buena Park, CA 90620	ACCUSATION
15	Pharmacy Permit No. PHY 46780	
16	CHRISTOPHER TRI HO	
17	5351 Tremaine Dr. Huntington Beach, CA 92659	·
18	Pharmacist License No. RPH 55450	
19	Respondents.	
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21		
22	Complainant alleges:	
23	PARTIES	
24	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity	
25	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.	
26	2. On or about July 22, 2004, the Board of Pharmacy issued Pharmacy Permit Number	
27	PHY 46780 to CVS Pharmacy No. 5837 (Respondent CVS). The Pharmacy Permit was in full	
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Accusation

force and effect at all times relevant to the charges brought herein and will expire on June 1, 2015, unless renewed.

3. On or about June 23, 2004, the Board of Pharmacy issued Pharmacist License Number RPH 55450 to Christopher Tri Ho (Ho). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2015, unless renewed.

### JURISDICTION

- 4. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
- 5. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].
- 6. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.
  - 7. Section 4300.1 of the Code states:

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

8. Section 4301 of the Code states in pertinent part:

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

(c) Gross negligence.

2.7

#### STATUTORY PROVISIONS

9. Section 4030 of the Code states:

"Intern pharmacist" means a person issued a license pursuant to Section 4208 [intern pharmacist license].

10. Section 4113(c) of the Code states:

The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

11. Section 4114(a) of the Code states:

An intern pharmacist may perform all functions of a pharmacist at the discretion of and under the direct supervision and control of a pharmacist whose license is in good standing with the board.

12. Section 4208(a) of the Code states in pertinent part that:

At the discretion of the board, an intern pharmacist license may be issued...

### COST RECOVERY

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

#### FACTUAL ALLEGATIONS

- 14. From February 1, 2006 through the present, Respondent Ho was the Pharmacist-in-Charge of Respondent CVS.
- 15. On or about January 16, 2007, the Board received an application for a registration as an intern pharmacist from Allison V. Dinh but never issued that license to her.
- 16. On or about July 9, 2009, the Board received in connection with an application for a pharmacist licensure and examination for Allison V. Dinh, a Pharmacy Intern Hours Affidavit executed by the then Pharmacist Supervisor for Respondent CVS, Peter Patel on or about June 27, 2008. That Pharmacist Supervisor certified that Ms. Dinh was employed or volunteered as an intern pharmacist under the supervision of a registered pharmacist from July 16, 2007 through December 15, 2007 for a total of 510 hours at Respondent CVS.

- 17. On or about December 28, 2010, the Board requested that Respondent Ho verify Ms. Dinh's employment history with Respondent CVS. On or about January 27, 2011, the Pharmacy Supervisor for Respondent CVS, Lina Semaan represented to the Board that Ms. Dinh had performed the duties of an intern pharmacist while employed at Respondent CVS from July 21, 2007 through December 15, 2007. However, on or about January 26, 2011, Ho represented that Ms. Dinh never interned at Respondent CVS.
- 18. On May 22, 2013, Respondents dispensed and furnished a used BD Sharps container RX 511451 to minor patient S.M. which was filled with used syringes.

### FIRST CAUSE FOR DISCIPLINE

# (Permitting the Unlicensed Practice of an Intern Pharmacist)

19. Respondents CVS and Ho are subject to disciplinary action under Code section 4301(o), for violating Business and Professions Code section 4110(a), in that they permitted an individual to perform the functions of an intern pharmacist without being licensed by the Board, as set forth in paragraphs 14 through 18 above, which are incorporated herein by reference.

# SECOND CAUSE FOR DISCIPLINE

#### (Gross Negligence)

20. Respondents CVS and Ho are subject to disciplinary action under Code section 4301(c), in that they committed gross negligence when they dispensed and furnished a used BD Sharps container which was filled with used syringes to minor patient S.M., as set forth in paragraphs 14 through 18, which are incorporated herein by reference.

# THIRD CAUSE FOR DISCIPLINE

# (Unprofessional Conduct)

21. Respondents CVS and Ho are subject to disciplinary action under Code section 4301 for unprofessional conduct in that they engaged in the activities described in paragraphs 14 through 18 above, which are incorporated herein by reference.

### DISCIPLINARY CONSIDERATIONS

22. To determine the degree of discipline, if any, to be imposed on Respondents, Complainant alleges that:

a. On September 2, 2011, the Board issued Citation number CI 2011 49363 against Ho for violating California Code of Regulations, title 16, section 1761 for dispensing an erroneous prescription without contacting the prescriber for clarification. The Board issued a fine which Respondent Christopher Ho paid.

b. On September 2, 2011, the Board issued Citation number CI 2009 44414 against Respondent CVS Pharmacy No. 5837 for violating California Code of Regulations, title 16, section 1761 for dispensing an erroneous prescription without contacting the prescriber for clarification. The Board issued a fine which Respondent CVS Pharmacy No. 5837 paid.

#### 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 Permit Number PHY 46780, issued to CVS Pharmacy Vanguard, Inc., doing business as CVS Pharmacy No. 5837;
- 2. Revoking or suspending Pharmacist License Number RPH 55450, issued to Christopher Tri Ho;
- 3. Ordering CVS Pharmacy Vanguard, Inc., doing business as CVS Pharmacy No. 5837 and Christopher Tri Ho 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;
  - 4. Taking such other and further action as deemed necessary and proper.

DATED: 8 13 15

VIRGINIA HEROLD

Board of Pharmacy

Department of Consumer Affairs

State of California

Complainant

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