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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. 5363

11 **KHIN MAUNG LINN**
12 **14 Baldwin Ave.**
13 **Daly City, CA 94015**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 104231**

15 Respondent.

16 Complainant alleges:

17 PARTIES

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

20 2. On or about June 24, 2010, the Board of Pharmacy issued Pharmacy Technician
21 License No. TCH 104231 to Khin Maung Linn (Respondent). The License was in full force and
22 effect at all times relevant to the charges herein and will expire on May 31, 2016, unless renewed.

23
24 JURISDICTION

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

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1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or
7 suspension of a Board-issued license, the placement of a license on a retired status, or the
8 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
9 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
10 licensee or to render a decision suspending or revoking the license.

11
12 STATUTORY AND REGULATORY PROVISIONS

13 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
14 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
15 not be limited to, any of the following:

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

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

21 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
22 of a licensee under this chapter.

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

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1 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
2 revoke a license when it finds that the licensee has been convicted of a crime substantially related
3 to the qualifications, functions or duties of the license.

4 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
5 controlled substance, except that furnished upon a valid prescription/drug order.

6 10. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
7 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
8 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

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

10 “For the purpose of denial, suspension, or revocation of a personal or facility license
11 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
12 crime or act shall be considered substantially related to the qualifications, functions or duties of a
13 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
14 licensee or registrant to perform the functions authorized by her license or registration in a manner
15 consistent with the public health, safety, or welfare.”

16 12. 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 of the licensing
18 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

19
20 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

21 13. Section 4021 of the Code states:

22 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
23 11053) of Division 10 of the Health and Safety Code.”

24 14. Section 4022 of the Code states, in pertinent part:

25 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
26 except veterinary drugs that are labeled as such, and includes the following:

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

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“(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.”

15. **Cocaine** is a Schedule I (in base/rock/crack form) or Schedule II controlled substance as designated by Health and Safety Code sections 11054(f)(1) and 11055(b)(6) and a dangerous drug as designated by Business and Professions Code section 4022. It is a narcotic drug.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

16. Respondent is subject to discipline under section 4301(l) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about April 17, 2014, in the criminal case *People v. Khin Maung Linn*, Case No. NF424006 in San Mateo County Superior Court, Respondent was convicted of violating Penal Code section 460, subdivision (b) (Larceny), a misdemeanor. The conviction was entered as follows:

a. On or about November 12, 2013, Daly City Police responded to a report by a Chevron gasoline station in Daly City that Respondent had attempted to purchase gasoline using a counterfeit \$100 bill. Upon making contact with Respondent, Daly City Police found him to be in possession of a total of four (4) counterfeit \$100 bills. During an interview, Respondent said the police might also find “several” counterfeit \$10 bills in his home. A search warrant executed at his home found a single counterfeit \$10 bill, and a vial containing a usable quantity of **cocaine**.

b. On or about December 12, 2013, in *People v. Khin Maung Linn*, Case No. NF424006 in San Mateo County Superior Court, Respondent was charged with violating: (1) Health and Safety Code section 11350, subdivision (a) (Possession of Controlled Substance – **cocaine**), a felony; (2) Penal Code section 470, subdivision (d) (Forgery), a felony; (3) Penal Code section 460, subdivision (b) (Larceny), a felony; and (4) Penal Code section 476 (Possess or Pass Fictitious Bill, Note, or Check), a felony.

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1 c. On or about April 17, 2014, count (3) was amended to substitute a misdemeanor
2 count of violating Penal Code section 460, subdivision (b) (Larceny). Respondent pleaded nolo
3 contendere to this substituted count and was convicted. He also entered a nolo contendere plea as
4 to count (1), and as to this count he was diverted from further prosecution/granted deferred entry
5 of judgment for a period of eighteen (18) months, on specified terms and conditions including
6 successful completion of rehabilitation efforts. Counts (2) and (4) were dismissed pursuant to the
7 plea. As to count (3), imposition of sentence was suspended and Respondent was placed on court
8 probation for a period of two (2) years, on terms and conditions including fifteen (15) days in jail
9 (with alternative sentencing recommendation), search conditions, and fines and fees.

10
11 SECOND CAUSE FOR DISCIPLINE

12 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

13 17. Respondent is subject to discipline under section 4301(f) of the Code, in that, as
14 described in paragraph 16 above, Respondent committed acts involving moral turpitude,
15 dishonesty, fraud, deceit, or corruption..

16
17 THIRD CAUSE FOR DISCIPLINE

18 (Possession of Controlled Substance(s))

19 18. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
20 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
21 in paragraph 16 above, possessed, conspired to possess, and/or assisted in or abetted possession
22 of, a controlled substance, without a prescription.

23
24 FOURTH CAUSE FOR DISCIPLINE

25 (Unprofessional Conduct)

26 19. Respondent is subject to discipline under section 4301 of the Code in that, as
27 described in paragraphs 16-18 above, Respondent engaged in unprofessional conduct.

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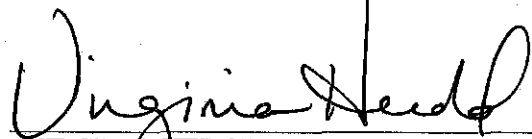
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PRAYER

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 License No. TCH 104231, issued to Khin Maung Linn (Respondent);
2. Ordering Respondent to pay the Board 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 is deemed necessary and proper.

DATED: 3/31/15



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

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