KAMALA D. HARRIS
Attorney General of California
LINDA L. SUN
Supervising Deputy Attorney General
KEVIN J. RIGLEY
Deputy Attorney General
State Bar No. 131800
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 620-2558
Facsimile: (213) 897-2804
Attorneys for Complainant

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **HUGH QUOCHUY NGUYEN** 1853 E. Orange Grove Blvd. Pasadena, CA 91104 Pharmacist License No. RPH 62556 Respondent.	Case No. 5405 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about July 23, 2009, the Board issued Pharmacist License No. RPH 62556 (license) to Hugh Quochuy Nguyen (Respondent). The pharmacist license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2015, unless renewed.

///

///

JURISDICTION

3. 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 (Code) unless otherwise indicated.

4. 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.].

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

6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or suspension of a Board-issued license, 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.

STATUTORY AND REGULATORY PROVISIONS

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

. . .

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

. . .

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

. . .

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

. . .

"(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."

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

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

9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous drug or dangerous device except upon the prescription of an authorized prescriber.

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

11. Section 4327 of the Code, in pertinent part, makes it unlawful, while on duty, to sell, dispense or compound any drug while under the influence of any dangerous drug.

12. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself or herself.

13. Health and Safety Code section 11173, subdivision (a), provides that no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

///

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

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

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

16. Section 4021 of the Code states:

"'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

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

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, 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.

. . .

"(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."

18. "Temazepam", in a class of sedative/hypnotics, is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057(d)(29) and a dangerous drug pursuant to Business and Professions Code section 4022.

19. "MS Contin", a brand name for extended release morphine sulfate, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1)(M) and a dangerous drug pursuant to Business and Professions Code section 4022.

20. "Hydrocodone/APAP" is a schedule III controlled substance pursuant to Health and Safety Code section 11056(e)(4), and are categorized as dangerous drugs pursuant to section 4022.

///

21. "Adderall", a brand name for amphetamine or dextroamphetamine, is a Scheduled II controlled substance as defined in Health and Safety Code section 11055(d)(1) and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

FACTUAL BACKGROUND

22. Respondent, while employed as a licensed pharmacist at Simi Valley Hospital & Healthcare Service (SVHHS), admitted to diverting controlled drugs from the "Expired Drug Bin" and consuming them during the time period of 5/21/2013 through 8/27/2014. The drugs he admitted to diverting and consuming were: #12 Adderall 10mg, #1 Hydrocodone/ APAP 5-325, #1 MS Contin 60mg and #38 Temazepam.

23. Respondent was originally hired as a licensed pharmacist at SVHHS on 3/21/2013 to fill a newly created graveyard pharmacist position at that location. Respondent worked this shift seven (7) days on and seven (7) days off until 8/28/2014, when he took a Leave of Absence from SVHHS. There were no pharmacy technicians assigned to the graveyard shift with Respondent.

24. All controlled drugs at the SVHHS pharmacy were stored in a separate locked room referred to as the "Narcotic Vault". A paper perpetual inventory is maintained on all scheduled drugs. When an expired or unusable controlled drug is returned to the SVHHS pharmacy, it is logged into the "Expired Drug Bin" and is inventoried on a separate "paper log".

25. On or about 2/6/2014, EXP Pharmaceuticals came to SVHHS to retrieve their controlled drugs. At such time, an employee of EXP Pharmaceuticals identified that inside a bottle of Temazepam 15mg were #38 capsules which were not Temazepam 15mg. The Pharmacist-in-Charge (PIC) at SVHHS verified that all of the other expired controlled drugs were correct. However, the PIC suspected the Temazepam capsules may have been deliberately replaced, and thereby instructed the SVHHS daytime pharmacy staff to begin counting and verifying what was in the expired drug log on an almost daily basis.

26. On 5/8/2014, methylphenidate 10mg #39 tablets were placed in the expired drug bin in the "Narcotic Vault" and logged into the expired drug inventory. On 5/20/14, staff pharmacists at SVHHS informed the PIC that they only counted #5 tablets in the bottle of methylphenidate 10mg. When the PIC counted the same methylphenidate 10mg bottle on 5/21/14, she found that

the quantity was correct but that #8 of the tablets were not methylphenidate 10mg, but rather atenolol 25mg Mylan brand. Only two pharmacists at SVHHS had access to the "Narcotic Vault" during that time period.

27. The PIC subsequently requested that a surveillance camera be placed in the "Narcotic Vault" and on 8/7/14, one was installed. Thereafter, the PIC regularly reviewed the video and on 8/27/2014, she observed Respondent (on video) accessing the expired controlled drug drawer. According to the PIC, it appeared as though Respondent had removed one tablet from the controlled drug drawer and placed it into his mouth. Thereafter, the PIC reviewed the controlled substance expired drug log and conducted an audit. In addition to the missing Temazepam, the PIC also discovered the following discrepancies: -12 tablets of Adderall 10mg, -1 tablet of Hydrocodone/APAP 5-325, and -1 tablet of MS Contin 60mg. When the PIC then confronted Respondent with this evidence, Respondent admitted to diverting all these missing controlled drugs identified above. Respondent also admitted to the PIC at that time that he had a drug addiction problem and that he wished to receive professional help for this.

28. Thereafter, on or about August 28, 2014, Respondent personally called the company MAXIMUS to request to join the Pharmacist Recovery Program (PRP). During his initial telephonic intake with a MAXIMUS Clinical Case Manager ("A.M."), Respondent admitted to A.M. that he had recently been placed on a Leave of Absence by his employer, SVHHS, after he was caught on videotape diverting prescription medications at his workplace by his employer. Respondent specifically admitted to A.M. at that time that he had diverted from his workplace the prescription medications Adderall and Hydrocodone for his own use, and that he had also worked as a licensed pharmacist while under the influence of drugs.

29. Though Respondent did complete an initial portion of the PRP through MAXIMUS, he failed to successfully complete the entire program. As a result thereof, the Pharmacist Recovery Committee determined that Respondent's case with MAXIMUS should be closed as a "Public Risk" and referred the matter back to the Board for further action.

///

///

FIRST CAUSE FOR DISCIPLINE

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

30. Respondent is subject to discipline under section 4301(f) of the Code in that Respondent, as described in paragraphs 22 to 29 above, committed numerous acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

SECOND CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substances)

31. Respondent is subject to discipline under section 4301(h) of the Code, and/or 4301(j) and/or (o) of the Code and Health and Safety Code section 11170, in that Respondent, as described in paragraphs 22 to 29 above, administered controlled substances to himself.

THIRD CAUSE FOR DISCIPLINE

(Furnishing of Controlled Substances)

32. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, as described in paragraphs 22 to 29 above, furnished to himself or another without a valid prescription, and/or conspired to furnish, and/or assisted or abetted furnishing of, controlled substances.

FOURTH CAUSE FOR DISCIPLINE

(Possession of Controlled Substances)

33. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described in paragraphs 22 to 29 above, possessed, conspired to possess, and/or assisted in or abetted possession of, controlled substances, without a prescription.

FIFTH CAUSE FOR DISCIPLINE

(Selling, Dispensing, or Compounding While Under the Influence)

34. Respondent is subject to disciplinary action under section 4301(j) and/or (o) and/or section 4327 of the Code, in that Respondent, as described in paragraphs 22 to 29 above, sold, dispensed or compounded drug(s) while under the influence of a dangerous drug, and/or directly or indirectly attempted, conspired, and/or assisted in or abetted such conduct.

SIXTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substances by Fraud, Deceit or Subterfuge)

35. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs 22 to 29 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of controlled substances, by fraud, deceit, subterfuge, or concealment of material fact.

SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

36. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 22 to 35 above, engaged in unprofessional conduct.

DISCIPLINARY CONSIDERATION

37. Though Respondent did complete an initial portion of the Pharmacy Recovery Program through MAXIMUS, he failed to successfully complete the entire program. As a result thereof, the Pharmacist Recovery Committee determined that Respondent's case with MAXIMUS should be closed as a "Public Risk" and referred the matter back to the Board for further action.

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 Pharmacist License Number RPH 62556, issued to Hugh Quochuy Nguyen (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: 5/6/15

Virginia Herold

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