

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 STEPHANIE ALAMO-LATIF
Deputy Attorney General
4 State Bar No. 283580
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 327-6819
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5475

12 **STEVE HONG KIM**
13 **1390 West H Street, Suite F**
Oakdale, CA 95361

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
15 **123135**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about May 29, 2012, the Board issued Pharmacy Technician Registration
22 Number TCH 123135 to Steve Hong Kim ("Respondent"). The pharmacy technician registration
23 was in full force and effect at all times relevant to the charges brought herein and will expire on
24 November 30, 2015, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

28 ///

STATUTORY PROVISIONS

4. Section 4300 states, in pertinent part:

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

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper . . .

5. Section 4300.1 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.

6. Section 4301 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:

....

(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.

....

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

3

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

9 7. Section 4022 states:

10 "Dangerous drug" or "dangerous device" means any drug or device
11 unsafe for self-use in humans or animals, and includes the following:

12 (a) Any drug that bears the legend: "Caution: federal law prohibits
13 dispensing without prescription," "Rx only," or words of similar import.

14 (b) Any device that bears the statement: "Caution: federal law restricts
15 this device to sale by or on the order of a -----," "Rx only," or words of similar
16 import, the blank to be filled in with the designation of the practitioner licensed to use
17 or order use of the device.

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

20 8. Section 4060 states, in pertinent part:

21 No person shall possess any controlled substance, except that furnished to
22 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
23 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
24 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
25 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
26 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
27 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
28 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

9. Health and Safety Code section 11170 states that "[n]o person shall prescribe,
administer, or furnish a controlled substance for himself."

10. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, that
"[n]o 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 . . ."

COST RECOVERY

11. Section 125.3 provides, in pertinent part, that a Board may request the administrative
law judge to direct a licentiate found to have committed a violation or violations of the licensing

1 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
2 case.

3 **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

4 12. "Adderall IR (immediate release)" and "Adderall XR (extended release)" are
5 amphetamines-dextroamphetamines (amphetamine salts) used in the treatment of Attention
6 Deficit Hyperactivity Disorder. Adderall IR and Adderall XR are Schedule II controlled
7 substances as designated by Health and Safety Code section 11055, subdivision (d)(1).

8 13. "Cocaine" is a Schedule II controlled substance as designated by Health and Safety
9 Code section 11055, subdivision (b)(6).

10 14. "Marijuana" is a Schedule I controlled substance as designated by Health and Safety
11 Code section 11054, subdivision (d)(13).

12 15. Adderall IR, Adderall XR, cocaine, and marijuana are all dangerous drugs within the
13 meaning of Code section 4022 in that they require a prescription under federal law.

14 **BACKGROUND**

15 16. At all times relevant to the charges brought herein, Christen Kim ("Kim") was the
16 owner and Pharmacist-in-Charge of Oakdale Pharmacy located on West H. Street in Oakdale,
17 California. Kim employed her husband, Respondent, as a technician at the pharmacy.

18 17. On or about December 29, 2014, the Board received a letter from Kim, reporting that
19 Respondent had overdosed on drugs and had admitted stealing Adderall XR 30 mg and Adderall
20 IR 30 mg from the pharmacy. Kim estimated that Respondent had taken 600 dosage units and
21 245 dosage units of each drug, respectively. Kim provided the Board with a copy of a *Report of*
22 *Theft or Loss of Controlled Substances Form DEA-106*, which she had submitted to the Drug
23 Enforcement Agency on December 26, 2014.

24 18. On or about January 6, 2015, the Board's representative sent a letter to Kim,
25 requesting further documentation, including a detailed explanation of the circumstances
26 surrounding the theft, a photocopy of the audit that was conducted to determine the amount of the
27 theft, and a photocopy of the employee's (Respondent) admission to the theft, if available.

28 ///

1 19. On or about February 2, 2015, the Board received various documents from Kim,
2 including an audit summary and a typewritten note signed by Respondent. The audit summary
3 indicated that 525 dosage units of amphetamine salts IR 30 mg and 700 dosage units of
4 amphetamine salts ER 30 mg were unaccounted for. Respondent admitted in his note that he took
5 the Adderall 30 mg ER and Adderall 30 mg IR without Kim's knowledge or consent for personal
6 use and that he became addicted to the medication "very quickly".

7 20. On or about March 11, 2015, Board Inspector H. N. conducted an inspection of the
8 pharmacy. H. N. reviewed the audit summary with Kim and asked for the beginning and ending
9 dates of the inventory. Kim showed H. N. an Excel spreadsheet on the computer, which
10 documented the pharmacy's receipt and dispensing of Schedule II controlled substances. Kim
11 stated that based on the more frequent ordering pattern of the drugs during the last few weeks in
12 2014, she used the data from the spreadsheets in order to conduct the audit. The spreadsheets
13 indicated that the amphetamine salts IR 30 mg and amphetamine salts XR 30 mgs were counted
14 on December 26, 2014, and January 30, 2015, respectively. Kim showed H. N. a document,
15 which indicated that an annual controlled substances inventory was conducted at close of business
16 on December 1, 2012 and November 30, 2013. However, the inventory worksheets were empty;
17 i.e., they did not include any data of the inventory. H. N. requested that Kim provide her with the
18 inventory conducted on December 1, 2012, within three days. H. N. obtained the pharmacy's
19 dispensing data for amphetamine salts IR and XR from December 2, 2012 to January 30, 2015.

20 21. H. N. interviewed Kim. Kim stated that during the evening of December 23, 2014,
21 Respondent was behaving erratically at home, and was paranoid and hallucinating. Respondent
22 turned all of the lights on in the house and woke up Kim and their two children. Kim was unable
23 to calm Respondent down, so she and her children left the home. As Kim was driving away from
24 the residence, she was contacted by the police. Kim's neighbors had reported to the police
25 department that Respondent was running around the street in his boxer shorts. Respondent was
26 transported to the hospital by the police.

27 22. On or about March 17, 2015, H. N. received the controlled substances inventory from
28 Kim. That same day, H. N. sent a letter to Valley Wholesale Drug Co., LLC ("Valley

1 Wholesale”), requesting the sales record of all brand and generic amphetamine salts IR and XR
2 30 mg that had been purchased by the pharmacy from December 1, 2012 to January 30, 2015.
3 H. N. received the sales record from Valley Wholesale on March 20, 2015.

4 23. On or about March 18, 2015, H. N. contacted Respondent. Respondent admitted that
5 he started using cocaine in his 20’s and last used the drug on January 10, 2015. Respondent also
6 admitted that he had been using amphetamine salts since June 2014; and had stolen
7 approximately six bottles of amphetamine salts XR 30 mg and two to three bottles of
8 amphetamine salts IR 30 mg from the pharmacy during business hours without Kim’s knowledge.
9 Respondent began taking one pill per day, then increased to two pills per day. As to the incident
10 of December 23, 2014, Respondent admitted that he was informed by a nurse at the hospital that
11 he tested positive for cocaine, THC (tetrahydrocannabinol, psychoactive compound in marijuana),
12 and opiates. Respondent admitted further that he never had valid prescriptions for amphetamine
13 salts, cocaine, or marijuana.

14 24. On or about March 26, 2015, H. N. sent a letter to Cardinal Health, requesting the
15 sales record of all brand and generic amphetamine salts IR and XR 30 mg that had been
16 purchased by the pharmacy from December 1, 2012 to January 30, 2015. H. H. received the sales
17 record from Cardinal Health on March 30, 2015.

18 25. H. M. conducted an audit of the pharmacy’s inventory of amphetamine salts 30 mg IR
19 and XR for the period from December 1, 2012 to January 30, 2015, based on the documentation
20 provided by the pharmacy, Valley Wholesale, and Cardinal Health. The audit revealed shortages
21 of 600 dosage units of amphetamine salts XR 30 mg and 545 dosage units of amphetamine salts
22 IR 30 mg.

23 **FIRST CAUSE FOR DISCIPLINE**

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

25 26. Respondent is subject to disciplinary action pursuant to section 4301, subdivision (f),
26 for unprofessional conduct, in that while employed and on duty as a pharmacy technician at
27 Oakdale Pharmacy, Respondent committed acts involving moral turpitude, dishonesty, fraud,
28 deceit, or corruption, as follows: Respondent stole or diverted approximately six bottles of

1 amphetamine salts XR 30 mg (Adderall XR) and two to three bottles of amphetamine salts IR 30
2 mg (Adderall IR) from the pharmacy during business hours, for his own personal use, without
3 Kim's knowledge or consent. Further, Board Inspector H. M.'s audit revealed shortages of 600
4 dosage units of amphetamine salts XR 30 mg and 545 dosage units of amphetamine salts IR 30
5 mg at the pharmacy for the time period of December 1, 2012 to January 30, 2015. The facts and
6 circumstances are more fully set forth above in paragraphs 16 through 25.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Self-Administration of Controlled Substances)**

9 27. Respondent is subject to disciplinary action pursuant to section 4301, subdivision (h),
10 for unprofessional conduct, in that Respondent self-administered the controlled substances
11 Adderall IR, Adderall XR, cocaine, and marijuana, and used the medications to an extent or in a
12 manner dangerous or injurious to himself, others and/or the public, as set forth above in
13 paragraphs 16 through 25.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Violations of State Laws Regulating Controlled Substances)**

16 28. Respondent is subject to disciplinary action pursuant to section 4301, subdivision (j),
17 for unprofessional conduct, in that Respondent obtained the controlled substances Adderall IR,
18 Adderall XR, cocaine, and marijuana by fraud, deceit, misrepresentation, or subterfuge, in
19 violation of Health and Safety Code section 11173, subdivision (a), possessed the controlled
20 substances without valid or lawful prescriptions for the medications, in violation of section 4060,
21 and self-administered the controlled substances, in violation of Health and Safety Code section
22 11170, as set forth above in paragraphs 16 through 25.

23 **FOURTH CAUSE FOR DENIAL**

24 **(Violations of the Pharmacy Law)**

25 29. Respondent is subject to disciplinary action pursuant to section 4301, subdivision (o),
26 for unprofessional conduct, in that Respondent violated or attempted to violate, directly or
27 indirectly, a provision or term of the Pharmacy Law (Bus. & Prof. Code § 4300, et seq.),
28 specifically, section 4060, as set forth above in paragraphs 16 through 25, and 28.

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

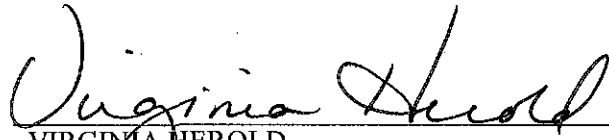
PRAYER

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 123135, issued to Steve Hong Kim;
2. Ordering Steve Hong Kim 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: _____

9/4/15



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

SA2015103646