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

10 In the Matter of the Accusation Against:

Case No. 5493

11 **VAN NHU NGUYEN**
12 **P.O. Box 1602**
13 **Yucaipa, CA 92399**

A C C U S A T I O N

14 **Pharmacist License No. RPH 66262**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2.a On or about October 13, 2011, the Board of Pharmacy issued Pharmacist License
22 Number RPH 66262 to Van Nhu Nguyen (Respondent). The Pharmacist License was in full force
23 and effect at all times relevant to the charges brought herein and will expire on October 31, 2015,
24 unless renewed.

25 **JURISDICTION**

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

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

6 6. Section 4300.1 of the Code states:

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

11 STATUTORY PROVISIONS

12 7. Section 4059(a) of the Code states in pertinent part:

13 A person may not furnish any dangerous drug, except upon the prescription
14 of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
15 pursuant to Section 3640.7.

16 8. Section 4060 of the Code states:

17 No person shall possess any controlled substance, except that furnished to
18 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
19 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
20 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
21 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
22 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
23 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not
24 apply to the possession of any controlled substance by a manufacturer, wholesaler,
25 pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian,
26 naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician
27 assistant, when in stock in containers correctly labeled with the name and address
28 of the supplier or producer.

 Nothing in this section authorizes a certified nurse-midwife, a nurse
practitioner, a physician assistant, or a naturopathic doctor, to order his or her own
stock of dangerous drugs and devices.

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9. 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:

.....

"(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.

"(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

"(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, or 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."

10. Section 4323 of the Code states:

"Every person who, in order to obtain any drug, falsely represents himself or herself to be a physician or other person who can lawfully prescribe the drug, or falsely represents that he or she is acting on behalf of a person who can lawfully prescribe the drug, in a telephone or electronic communication with a pharmacist, shall be punished by imprisonment in the county jail for not more than one year."

11. Section 4324 subdivision (a) of the Code states:

"(a) Every person who signs the name of another, or of a fictitious person, or falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment in the state prison, or by imprisonment in the county jail for not more than one year.

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12. Section 4327 of the Code states:

“Any person who, while on duty, sells, dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor.”

13. Section 11157 of the Health and Safety Code states:

“No person shall issue a prescription that is false or fictitious in any respect.”

14. Section 11170 of the Health and Safety Code states:

“No person shall prescribe, administer, or furnish a controlled substance for himself.”

15. Section 11171 of the Health and Safety Code states:

“No person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division.”

16. Health & Safety Code section 11350 states:

“Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.”

....

COST RECOVERY

17. 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

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DRUGS

18. Xanax [generic: Alprazolam 0.5mg, 1mg & 2mg] is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057(d) and dangerous drug pursuant to Business and Professions Code section 4022. Indications for use: Anxiety.

19. Soma [generic: Carisoprodol 350mg] is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057(g) and dangerous drug pursuant to Business and Professions Code section 4022. Indications for use: Muscle Pain.

20. Klonopin [generic: Clonazepam] is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057(d) and dangerous drug pursuant to Business and Professions Code section 4022. Indications for use: Anxiety/Seizures.

21. Ativan [generic: Lorazepam] is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057(d) and dangerous drug pursuant to Business and Professions Code section 4022. Indications for use: Anxiety/Seizures.

22. Fiorinal w/codeine [generic: ASA/butalbital/caffeine and codeine] is a Schedule III controlled substance pursuant to Health and Safety Code section 11056(e)(2) and dangerous drug pursuant to Business and Professions Code section 4022. Indications for use: Tension headache.

23. Pepcid [generic: Famotidine 20mg &40mg] is a dangerous drug pursuant to Business and Professions Code section 4022. Indications for use: Stomach Acid.

24. Prilosec [generic: Omeprazole 20mg] is a dangerous drug pursuant to Business and Professions Code section 4022. Indications for use: Stomach Acid.

25. Voltaren Gel [generic: Diclofenac Gel 1%] is a dangerous drug pursuant to Business and Professions Code section 4022. Indications for use: Arthritis.

26. Valtrex [generic: Valacyclovir 1gm] is a dangerous drug pursuant to Business and Professions Code section 4022. Indications for use: Antiviral.

27. Denavir Cream is a dangerous drug pursuant to Business and Professions Code section 4022. Indications for use: Antiviral.

28. Cipro [generic: Ciprofloxacin 500mg] is a dangerous drug pursuant to Business and Professions Code section 4022. Indications for use: Antibiotic.

1 29. Generic: Ipratrop/Albuterol Sol is a dangerous drug pursuant to Business and
2 Professions Code section 4022. Indications for use: Respiratory.

3 **FACTUAL ALLEGATIONS**

4 30. At all times mentioned herein, Respondent was employed as a pharmacist at Loma
5 Linda University - Highland Springs Medical Plaza Pharmacy located at 81 South Highland
6 Springs Avenue Suite 90, Beaumont, CA 92223 (Highland Springs Pharmacy).

7 31. At all times mentioned herein, Respondent was also employed as a "floating"
8 pharmacist at various locations of CVS Pharmacy, located in or near San Bernardino County,
9 California.

10 32. On Sunday, April 12, 2015, while the only pharmacist working at Highland Springs
11 Pharmacy, Respondent passed out in the break room. Respondent claimed that he fell asleep after
12 taking Soma and two Xanax and he fell off the chair and hit his head. Respondent was found to
13 have slurred speech and he was taken by ambulance to the emergency room at San Gorgonio
14 Medical Hospital for treatment. A capsule identified as Fiorinal w/codeine was found on the floor
15 in the break room near the trash can after Respondent was transported to the hospital.

16 33. While being treated at San Gorgonio Medical Hospital several prescription pills were
17 found in his possession. The medications were subsequently determined to be the following
18 generic controlled substances: #13-Tylenol No.4, #1-Clonazepam 2mg, #3- Fiorinal with
19 Codeine, #9-Lorazepam 2mg and #22- Soma 350mg.

20 34. On Monday, April 13, 2015, Respondent admitted to the Director of Outpatient
21 Pharmacies for Loma Linda University Medical Center that he diverted medications from
22 Highland Springs Pharmacy for self use.

23 35. On or about May 22, 2015, Respondent admitted to supervisors at CVS Pharmacy that
24 within the prior 2-3 months, he had diverted 6 tablets of alprazolam 0.5 mg or alprazolam 1.0 mg
25 for self use from CVS Pharmacy. Respondent stated that he took the pills when it was convenient
26 and he felt that he needed it. Respondent could not recall the strength of alprazolam, the specific
27 date it was taken, nor the CVS Pharmacy from where the medication was diverted.

1 36. A review of Respondent's prescription profile at Highland Springs Pharmacy revealed
 2 that on December 21, 2012, January 24, 2013, April 25, 2013, January 12, 2014, April 11, 2014,
 3 June 6, 2014 and December 2, 2014, Respondent transcribed the following prescriptions for
 4 dangerous drugs to himself using his name or the name of pharmacist in charge D.C.'s name as
 5 the prescriber as described below:

Date	Rx#	Drug	Quantity	Prescriber
12/21/2012	4001	Famotidine 20mg	#100	D.C. RPH
1/24/2013	6122	Omeprazole 20mg	#30	Van Nguyen RPH
4/25/2013	11559	Voltaren 1%Gel		D.C. RPH
4/25/2013	11560	Valacyclovir 1gm	#4	D.C. RPH
4/25/2013	11561	Denavir Cream 1%		D.C. RPH
1/12/2014	25777	Ciprofloxacin 500mg	#6	Van Nguyen RPH
4/11/2014	31974	Ipratrop/Albuterol Sol		Van Nguyen RPH
6/6/2014	35611	Valacyclovir 1gm	#30	D.C. RPH
12/2/2014	45851	Famotidine 40mg	#100	D.C. RPH

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct - Dishonesty)**

18 37. Respondent is subject to disciplinary action under section 4301 of the Business and
 19 Professions Code subdivisions (f) and (j) in that while working as a pharmacist at Highland
 20 Springs Pharmacy and CVS Pharmacy, Respondent engaged in acts involving moral turpitude,
 21 dishonesty and fraud. The circumstances are set forth above in paragraphs 30 through 36, which
 22 are incorporated herein by reference.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct - Danger to the Public)**

25 38. Respondent is subject to disciplinary action under section 4301, subdivision (h), of
 26 the Business and Professions Code in that Respondent self-administered controlled
 27 substances/dangerous drugs to the extent that it impaired his ability to the practice of pharmacy
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1 with safety to the public. The circumstances are set forth above in paragraphs 30 through 36,
2 which are incorporated herein by reference.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Prescribing Controlled Substance for Self)**

5 39. Respondent is subject to disciplinary action under sections 9301 subdivision (j) and
6 4059 of the Code Business and Professions Code for violating sections 11170 and 11171 of the
7 Health & Safety Code in that Respondent prescribed, administered, or furnished controlled
8 substances to himself without authorization to do so. The circumstances are set forth above in
9 paragraphs 30 through 35, which are incorporated herein by reference.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct - Functioning Under the Influence of Dangerous Drugs)**

12 40. Respondent is subject to disciplinary action under sections 4301 subdivision (o) and
13 4327 of the Business and Profession Code in that while on duty as a pharmacist at Highland
14 Springs Pharmacy and CVS Pharmacy, Respondent sold, dispensed and/or compounded drugs
15 while under the influence of dangerous drugs. The circumstances are set forth above in
16 paragraphs 30 through 36, which are incorporated herein by reference.

17 **FIFTH CAUSE FOR DISCIPLINE**

18 **(Unlawful Possession of a Controlled Substance)**

19 41. Respondent is subject to disciplinary action under sections 4301 subdivision (o) and
20 4060 of the Business and Profession Code in that while employed as a pharmacist at Highland
21 Springs Pharmacy and CVS Pharmacy, Respondent possessed controlled substances without a
22 prescription. The circumstances are set forth above in paragraphs 30 through 35, which are
23 incorporated herein by reference.

24 **SIXTH CAUSE FOR DISCIPLINE**

25 **(False Representation of Self as Physician or Agent of Physician to Obtain Drug)**

26 42. Respondent is subject to disciplinary action under sections 4301 subdivision (o) and
27 4323 of the Business and Profession Code in that while employed as a pharmacist at Highland
28 Springs Pharmacy, Respondent obtained drugs by falsely represented himself to be a physician or

1 other person who can lawfully prescribe the drug, or falsely represented that he is acting on behalf
2 of a person who can lawfully prescribe the drug. The circumstances are set forth above in
3 paragraphs 30 and 36, which are incorporated herein by reference.

4 **SEVENTH CAUSE FOR DISCIPLINE**

5 **(Possession of Drugs Obtained Through Forged Prescription)**

6 43. Respondent is subject to disciplinary action under sections 4301 subdivision (o), 4323
7 subdivision (a) and 4324 of the Business and Profession Code and section 11157 of the Health
8 and Safety Code in that while on duty as a pharmacist at Highland Springs Pharmacy, Respondent
9 signed the name of another, and falsely represented the authenticity of prescriptions, when he
10 transcribed prescriptions to himself using his name or pharmacist D.C.'s name as the prescriber.
11 The circumstances are set forth above in paragraphs 30 and 36, which are incorporated herein by
12 reference.

13 **EIGHTH CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct - Falsely Representing Facts)**

15 44. Respondent is subject to disciplinary action under section 4301 subdivision (g) of the
16 Business and Profession Code in that while on duty as a pharmacist at Highland Springs
17 Pharmacy, Respondent knowingly made or signed documents that falsely represents the existence
18 or nonexistence of facts, in that he transcribed the following prescriptions to himself using his
19 name or pharmacist D.C.'s name as the prescriber. The circumstances are set forth above in
20 paragraphs 30 and 36, which are incorporated herein by reference.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Board of Pharmacy issue a decision:

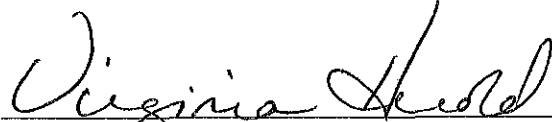
- 24 1. Revoking or suspending Pharmacist License Number RPH 66262, issued to Van Nhu
25 Nguyen
26 2. Ordering Van Nhu Nguyen to pay the Board of Pharmacy the reasonable costs of the
27 investigation and enforcement of this case, pursuant to Business and Professions Code section
28 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED:

7/21/15



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

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