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

11 In the Matter of the Accusation Against:
12 **MICHAEL LUM**
13 **1938 Cappelletti Court**
Mountain View, CA 94043
14 **Pharmacy Technician Registration No. TCH**
15 **71131**
16 Respondent.

Case No. 5633

A C C U S A T I O N

17
18 Complainant alleges:

19 PARTIES

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

22 2. On or about August 30, 2006, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 71131 to Michael Lum (Respondent). The Pharmacy Technician
24 Registration was in effect at all times relevant to the charges brought in this Accusation and will
25 expire on December 31, 2015, unless renewed.

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28 ///

JURISDICTION

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

5 4. Section 4300 of the Code states:

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

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

10 "(1) Suspending judgment.

11 "(2) Placing him or her upon probation.

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

13 "(4) Revoking his or her license.

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

16 ". . .

17 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
18 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
19 shall have all the powers granted therein. The action shall be final, except that the propriety of
20 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
21 Civil Procedure."

22 5. Section 4300.1 of the Code states:

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

28 ///

STATUTORY PROVISIONS

6. Section 480 of the Code states:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

...

"(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

"(3)(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made."

7. Section 482 of the Code states:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

"(a) Considering the denial of a license by the board under Section 480; or

"(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

9. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of the crime in
2 order to fix the degree of discipline or to determine if the conviction is substantially related to the
3 qualifications, functions, and duties of the licensee in question.

4 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
5 'registration.'"

6 10. Section 4301 of the Code states:

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

10 ...

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

14 ...

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

17 ...

18 "(I) The conviction of a crime substantially related to the qualifications, functions, and
19 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
20 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
21 substances or of a violation of the statutes of this state regulating controlled substances or
22 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
23 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
24 The board may inquire into the circumstances surrounding the commission of the crime, in order
25 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
26 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
27 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
28 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning

1 of this provision. The board may take action when the time for appeal has elapsed, or the
2 judgment of conviction has been affirmed on appeal or when an order granting probation is made
3 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
4 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
5 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
6 indictment.”

7 COST RECOVERY PROVISION

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

12 FACTUAL BACKGROUND

13 12. On or about May 13, 2014, to on or about May 16, 2014, while working as a store
14 manager at Walgreens, Respondent stole a credit card and intentionally used the stolen credit card
15 for various purchases. Respondent scribbled a line for the signature on each transaction. On or
16 about January 22, 2015, in a criminal proceeding entitled *The People of the State of California v.*
17 *Michael Lum*, in the Santa Clara County Superior Court, Case No. B1474038, Respondent was
18 convicted by his plea of nolo contendere to one count of using personal identifying information
19 without authorization and one count of shoplifting. (Penal Code §§ 530.5, subd. (a) and 459.5.)
20 Pursuant to the conviction, Respondent entered into a plea agreement with terms and conditions
21 which included, three years court-ordered probation and restitution in the amount of \$1,514.85.

22 FIRST CAUSE FOR DISCIPLINE

23 (Unprofessional Conduct: Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)
(Bus. & Prof. Code, § 4301, subd. (f))

24 13. Respondent has subjected his pharmacy technician registration to discipline because
25 he engaged in unprofessional conduct by committed an act of moral turpitude, dishonesty, fraud,
26 deceit, or corruption (Bus. & Prof. Code, § 4301, subd. (f)). The circumstances are described in
27 paragraphs 12, above.

28 SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Knowingly Signing Documents Falsely Representing State of Facts)

(Bus. & Prof. Code, § 4301, subd. (g))

14. Respondent has subjected his pharmacy technician registration to discipline because he engaged in unprofessional conduct by knowingly signing documents that falsely represents the existence or nonexistence of a state facts (Bus. & Prof. Code, § 4301, subd. (g)). The circumstances are described in paragraphs 12, above.

THIRD CAUSE FOR DISCIPLINE
(Unprofessional Conduct: Conviction of a Substantially-Related Crime)
(Bus. & Prof. Code, § 4301, subd. (l))

15. Respondent has subjected his pharmacy technician registration to discipline because he engaged in unprofessional conduct by being convicted of a crime substantially related to the qualifications, functions, and duties of a licensee. (Bus. & Prof. Code, § 4301, subd. (l)). The circumstances are described in paragraphs 12, above.

PRAYER

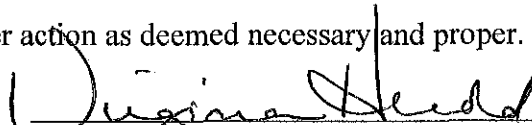
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 71131, issued to Michael Lum;

2. Ordering Michael Lum 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; and

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

DATED: 12/21/15


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

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