1	Kamala D. Harris	
2	Attorney General of California JAMES M. LEDAKIS	
3	Supervising Deputy Attorney General RON ESPINOZA	
4	Deputy Attorney General State Bar No. 176908	
5.	600 West Broadway, Suite 1800 San Diego, CA 92101	
6	P.O. Box 85266 San Diego, CA 92186-5266	
7	Telephone: (619) 645-2100 Facsimile: (619) 645-2061	
8	Attorneys for Complainant	
9	BEFOI	RE THE
10		PHARMACY ONSUMER AFFAIRS
11	STATE OF C	CALIFORNIA
12	In the Matter of the Accusation Against:	Case No. 5654
.13	HUNG NGOC HO	ACCUSATION
14	16572 Mount Neota Street Fountain Valley, CA 92708	
15	Pharmacist License No. RPH 47302	,
16	Respondent.	
17		
18	Complainant alleges:	
19	PAR	TIES
20	1. Virginia Herold (Complainant) br	ings this Accusation solely in her official
21	capacity as the Executive Officer of the Board of	Pharmacy, Department of Consumer Affairs
22	(Board).	
23	2. On August 5, 1994, the Board iss	ued Pharmacist License Number RPH 47302 to
24	Hung Ngoc Ho (Respondent). The Pharmacist L	cense was in full force and effect at all times
25	relevant to the charges brought herein and will e	xpire on March 31, 2018, unless renewed.
26	///	
27	///	
28	///	

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 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 of the Code states:
    - (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.
  - (e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.
  - 6. Section 4300.1 of the Code 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.

7. Section 4302 defines "license" to include any license, permit, registration, certificate, or exemption issued by the board.

#### STATUTORY PROVISIONS

#### 8. Section 4022 of the Code states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, 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.
- (b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.
- (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.

#### 9. Section 4059 of the Code states in part:

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

Section 4301 of the Code states:

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:

(c) Gross negligence.

(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.

(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.

///

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

10.

27

28

#### REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1714 states:

(d) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist.

#### COST RECOVERY

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.

#### DRUGS

- 13. Diphenoxylate/atropine is a Schedule V controlled substance as designated by Health and Safety Code section 11058, subdivision (c)(4) and is categorized as a dangerous drug under Code section 4022.
- 14. Carisoprodol, which has been reclassified on December 12, 2011, when the Drug Enforcement Agency ruled under the Controlled Substances Act that it is a Schedule IV controlled substance effective January 12, 2012, has since been categorized as a dangerous drug under Code section 4022.
- 15. Promethazine/codeine is a Schedule V controlled substance as designated by Health and Safety Code section 11058, subdivision (c)(1) and is categorized as a dangerous drug under Code section 4022.
- 16. Hydrocodone/APAP is a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4) and is categorized as a dangerous drug under Code section 4022.

- 17. Lorazepam is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(16) and is categorized as a dangerous drug under Code section 4022.
- 18. Morphine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(L) and is categorized as a dangerous drug under Code section 4022.
- 19. Oxycodone is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1) and is categorized as a dangerous drug under Code section 4022.
- 20. Tramadol, which has been reclassified on June 27, 2014, when the Drug Enforcement Agency ruled under the Controlled Substances Act that it is a Schedule IV controlled substance effective August 18, 2014, has since been categorized as a dangerous drug under Code section 4022.

#### **FACTUAL ALLEGATIONS**

- 21. On November 6, 2001, through March 4, 2015, Respondent was employed as a pharmacist-in-charge by Vons Pharmacy Store Number 2035 (Vons #2035) in Bakersfield, California.
- 22. On or about December 4, 2014, an inventory was conducted on Vons #2035. Shortages were identified. There were discrepancies between the hand count and inventories on mostly Schedule II substances. On or about February 2, 2015, the following controlled substances were listed as lost.

Controlled Substance in Preparation	Dosage Strength and Form	Quantity
Carisoprodol	350 mg tablet	2000
Diphenoxylate/Atropine	2.5 mg tablet	319
Hydrocodone/APAP	5-300 mg tablet	274
Hydrocodone/APAP	10-325 mg tablet	1200
Lorazepam	1 mg tablet	277
Lorazepam	1 mg tablet	300
Lorazepam	2 mg tablet	224

2	2
2	3
Z	1
4	5
(	5

Morphine	15 mg tablet	350
Morphine	30 mg tablet	209
Oxycodone/APAP	7.5-325 mg tablet	810
Oxycodone	30 mg tablet	820
Oxycodone/APAP	7.5-325 mg tablet	740
Oxycodone/APAP	10-325mg tablet	112
Promethazine/ VC Codein	Syrup	409 ml
Promethazine/ Codein	Syrup	307 ml
Tramadol	50 mg tablet	668

23. On February 5, 2015, two covert cameras were installed at the store. On February 20, 2015, store security reviewed the footage recorded by the cameras and observed Respondent's suspicious behavior. In footage dated February 9, 2015, Respondent was observed opening a bottle of prescription drugs, consuming several pills from the bottle, and placing the bottle back on the drug shelf. In footage dated February 10, 2015, Respondent was observed placing drugs into numerous vials, concealing the vials in a coat, placing the coat in a store's plastic bag, and concealing the remaining drugs inside his pockets. In footage dated February 11, 2015, Respondent was observed filling drugs into vials and then concealing them in his pockets. In footage dated February 20, 2015, Respondent was observed removing a box inside his pants' pocket, wrapping the box in a paper towel, placing the wrapped box in a store's plastic bag, and taking money from the register pouch and placing it in his pocket. A store inquiry showed that Respondent did not have any purchases in February 2015.

- 24. On February 25, 2015, the store's asset protection staff interviewed Respondent regarding the security footage. Respondent admitted to taking a five-day supply of antibiotics without a prescription and without paying for the medication, as well as stealing vitamins from the pharmacy.
- 25. On February 26, 2015, the store's corporate director of pharmacy operations and the store's district manager conducted an audit. The audit determined the following variance in addition to the losses listed in paragraph 22, above, which is incorporated herein by reference as though fully set forth.

28 | ///

.	C
	Tr

Controlled Substance in Preparation	Dosage Strength and Form	Quantity
Tramadol	50 mg tablet	77

26. On March 5, 2015, Respondent was terminated from employment at Vons #2035. On April 20, 2015, and April 22, 2015, a Pharmacy Board inspector conducted an inspection at Vons #2035. On April 15, 17, 2015, May 5, 14, and 26, 2015, and June 5 and 17, 2015, the Board inspector requested documentation related to losses at Vons #2035. On June 29, 2015, the Board inspector received from the store's corporate manager for pharmacy professional services, a copy of Vons #2035 purchase and dispensing data of all National Drug Code products for each drug during the period April 30, 2013, through January 29, 2015. On July 31, 2015, the Board inspector found Respondent responsible for the following reported losses during the period beginning December 11, 2013, through February 26, 2015, which is within Respondent's employment as the pharmacist-in-charge.

Controlled Substance in Preparation	Dosage Strength and Form	Quantity
Carisoprodol	350 mg tablet	2000
Diphenoxylate/Atropine	2.5 mg tablet	319
Hydrocodone/APAP	5-300 mg tablet	274
Hydrocodone/APAP	10-325 mg tablet	1200
Lorazepam	1 mg tablet	577
Lorazepam	2 mg tablet	224
Morphine	15 mg tablet	350
Morphine	30 mg tablet	209
Oxycodone	30 mg tablet	820
Oxycodone/APAP	7.5-325 mg tablet	1550
Oxycodone/APAP	10-325 mg tablet	112
Promethazine/ VC Codeine	Syrup	409 ml
Promethazine/ Codeine	Syrup	307 ml
Tramadol	50 mg tablet	668

# 

# 

## 

## 

## 

# 

#### 

## 

#### 

# 

# 

## 

## 

## 

## 19.

## 

#### 

# 

# 

## 

## 

# 

#### 

#### FIRST CAUSE FOR DISCIPLINE

## (Unprofessional Conduct - Failure to Maintain Operational Standards and Security)

27. Respondent has subjected his Pharmacist License to discipline for unprofessional conduct under Code section 4301, subdivision (o), for failing to provide effective control against the theft or diversion of dangerous drugs, in violation of title 16 of the California Code of Regulations, section 1714, subdivision (d). While Respondent was the pharmacist-in-charge, 3,041 tablets of schedule II drugs, 1,474 tablets of schedule III drugs, 3,469 tablets of schedule IV drugs, and 319 tablets and 716 milliliters of schedule V drugs, were stolen and/or diverted from the pharmacy at Vons #2035, as more fully set forth in paragraphs 13 – 26 above and incorporated by this reference as though set forth in full herein.

#### SECOND CAUSE FOR DISCIPLINE

## (Unprofessional Conduct – Gross Negligence)

28. Respondent has subjected his Pharmacist License to discipline for unprofessional conduct under Code section 4301, subdivision (c), in that Respondent was grossly negligent in the performance of his duties as pharmacist-in-charge for Vons #2035. The circumstances are that while Respondent was pharmacist-in-charge, 3,041 tablets of schedule II drugs, 1,474 tablets of schedule III drugs, 3,469 tablets of schedule IV drugs, and 319 tablets and 716 milliliters of schedule V drugs, went missing from inventory, as more fully set forth in paragraphs 13 – 26 above and incorporated by this reference as though set forth in full herein.

## THIRD CAUSE FOR DISCIPLINE

## (Unprofessional conduct - Committing Acts Involving Dishonesty, Fraud or Deceit)

29. Respondent has subjected his Pharmacist License to discipline for unprofessional conduct under Code section 4301, subdivision (f), for committing acts involving dishonesty, fraud or deceit while employed at Vons #2035. The circumstances are that on February 5, 2015, two covert cameras were installed at the store. In the recorded security footage, Respondent was seen opening a bottle of prescription drugs, consuming several pills from the bottle, as well as taking and concealing drugs inside his pockets, and taking money from the pharmacy register pouch and placing it in his pocket, as more fully set forth in paragraphs 23 – 24 above and

incorporated by this reference as though set forth in full herein. Respondent also admitted to taking a five-day supply of antibiotics (generic Bactrim DS) without a prescription and without paying for the medication.

#### **FOURTH CAUSE FOR DISCIPLINE**

## (Unprofessional Conduct - Furnishing of Dangerous Drugs Without Prescription)

30. Respondent has subjected his Pharmacist License to discipline for unprofessional conduct under Code section 4301, subdivision (o), and under Code section 4059, for unlawfully furnishing dangerous drugs without prescription, in that Respondent admitted that he took for himself a five-day supply of antibiotics (generic Bactrim DS) from the pharmacy at Vons #2035 without a prescription and without paying for the medication. In a review of security camera footage dated February 9, 2015, Respondent was also observed directly consuming pills from the pharmacy's drug stock, as more fully set forth in paragraphs 23 – 24, above and incorporated by this reference as though set forth in full herein.

#### 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 47302, issued to Hung Ngoc Ho;
- 2. Ordering Hung Ngoc Ho 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: 5/21/16

VIRGINIA HEROLD

Executive Officer Board of Pharmacy

Department of Consumer Affairs

State of California

Complainant

SD2015802840 81210950.doc