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

12 In the Matter of the Accusation Against:

Case No. 5654

13 **HUNG NGOC HO**
16572 Mount Neota Street
14 Fountain Valley, CA 92708

A C C U S A T I O N

15 **Pharmacist License No. RPH 47302**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings 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 issued Pharmacist License Number RPH 47302 to
24 Hung Ngoc Ho (Respondent). The Pharmacist License was in full force and effect at all times
25 relevant to the charges brought herein and will expire on March 31, 2018, unless renewed.

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1 **REGULATORY PROVISIONS**

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

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

7

8 **COST RECOVERY**

9 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
10 administrative law judge to direct a licentiate found to have committed a violation or violations
11 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
12 enforcement of the case, with failure of the licentiate to comply subjecting the license to not
13 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
14 may be included in a stipulated settlement.

15 **DRUGS**

16 13. Diphenoxylate/atropine is a Schedule V controlled substance as designated by
17 Health and Safety Code section 11058, subdivision (c)(4) and is categorized as a dangerous drug
18 under Code section 4022.

19 14. Carisoprodol, which has been reclassified on December 12, 2011, when the Drug
20 Enforcement Agency ruled under the Controlled Substances Act that it is a Schedule IV
21 controlled substance effective January 12, 2012, has since been categorized as a dangerous drug
22 under Code section 4022.

23 15. Promethazine/codeine is a Schedule V controlled substance as designated by
24 Health and Safety Code section 11058, subdivision (c)(1) and is categorized as a dangerous drug
25 under Code section 4022.

26 16. Hydrocodone/APAP is a Schedule III controlled substance as designated by
27 Health and Safety Code section 11056, subdivision (e)(4) and is categorized as a dangerous drug
28 under Code section 4022.

1	Morphine	15 mg tablet	350
2	Morphine	30 mg tablet	209
3	Oxycodone/APAP	7.5-325 mg tablet	810
4	Oxycodone	30 mg tablet	820
5	Oxycodone/APAP	7.5-325 mg tablet	740
6	Oxycodone/APAP	10-325mg tablet	112
7	Promethazine/ VC Codein	Syrup	409 ml
8	Promethazine/ Codein	Syrup	307 ml
9	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.

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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

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1 **FIRST CAUSE FOR DISCIPLINE**

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

3 27. Respondent has subjected his Pharmacist License to discipline for unprofessional
4 conduct under Code section 4301, subdivision (o), for failing to provide effective control against
5 the theft or diversion of dangerous drugs, in violation of title 16 of the California Code of
6 Regulations, section 1714, subdivision (d). While Respondent was the pharmacist-in-charge,
7 3,041 tablets of schedule II drugs, 1,474 tablets of schedule III drugs, 3,469 tablets of schedule
8 IV drugs, and 319 tablets and 716 milliliters of schedule V drugs, were stolen and/or diverted
9 from the pharmacy at Vons #2035, as more fully set forth in paragraphs 13 – 26 above and
10 incorporated by this reference as though set forth in full herein.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct – Gross Negligence)**

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

20 **THIRD CAUSE FOR DISCIPLINE**

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

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

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

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct - Furnishing of Dangerous Drugs Without Prescription)**

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

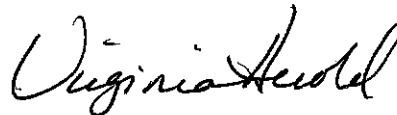
14 **PRAYER**

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

- 17 1. Revoking or suspending Pharmacist License Number RPH 47302, issued to Hung
18 Ngoc Ho;
- 19 2. Ordering Hung Ngoc Ho to pay the Board of Pharmacy the reasonable costs of the
20 investigation and enforcement of this case, pursuant to Business and Professions Code section
21 125.3; and
- 22 3. Taking such other and further action as deemed necessary and proper.

23
24 DATED: _____

5/21/16



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

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