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

11 In the Matter of the Accusation Against:

Case No. 5708

12 **HAU NHU TRUONG**
13 **10413 Rosedust Glen Drive**
14 **San Diego, CA 92127**

FIRST AMENDED ACCUSATION

15 **Pharmacist License No. RPH 56425**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about October 5, 2004, the Board of Pharmacy issued Pharmacist License
24 Number RPH 56425 to Hau Nhu Truong (Respondent). The Pharmacist License was in full force
25 and effect at all times relevant to the charges and allegations brought herein and expired on
26 October 31, 2016. On January 26, 2016, an Interim Suspension Order suspended the Pharmacist
27 License and Respondent was prohibited from practicing as a pharmacist in the State of California
28

1 until a final decision on the Accusation in this matter, or until the interim suspension order is
2 modified or vacated.

3 JURISDICTION

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

7 4. Section 4300, subdivision (a) of the Code states: "Every license issued may be
8 suspended or revoked."

9 5. Section 4300.1 of the Code states:

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

14 STATUTORY PROVISIONS

15 6. Section 482 of the Code states:

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

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

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

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

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

26 8. Section 493 of the Code states:

27 Notwithstanding any other provision of law, in a proceeding conducted by a
28 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

1 licensee in question, the record of conviction of the crime shall be conclusive evidence
2 of the fact that the conviction occurred, but only of that fact, and the board may inquire
3 into the circumstances surrounding the commission of the crime in order to fix the
4 degree of discipline or to determine if the conviction is substantially related to the
5 qualifications, functions, and duties of the licensee in question.

6 As used in this section, "license" includes "certificate," "permit," "authority,"
7 and "registration."

8 9. Section 4022 of the Code states:

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

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

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

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

19 10. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
20 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
21 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

22 11. Section 4060 of the Code states, in pertinent part, that no person shall possess any
23 controlled substance, except that furnished to a person upon the prescription of a physician,
24 dentist, podiatrist, optometrist, veterinarian or naturopathic doctor pursuant to Section 3640.7, a
25 certified nurse-midwife pursuant to section 2746.51, a nurse practitioner pursuant to Section
26 2836.1, a physician assistant pursuant to section 3502.1, a naturopathic doctor pursuant to section
27 3640.5, or a pharmacist pursuant to section 4052.1, 4052.2, or 4052.6.

28 12. 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 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.

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

3 ...

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

6 ...

7 (l) The conviction of a crime substantially related to the qualifications, functions,
8 and duties of a licensee under this chapter. The record of conviction of a violation of
9 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
10 regulating controlled substances or of a violation of the statutes of this state regulating
11 controlled substances or dangerous drugs shall be conclusive evidence of
12 unprofessional conduct. In all other cases, the record of conviction shall be conclusive
13 evidence only of the fact that the conviction occurred. The board may inquire into the
14 circumstances surrounding the commission of the crime, in order to fix the degree of
15 discipline or, in the case of a conviction not involving controlled substances or
16 dangerous drugs, to determine if the conviction is of an offense substantially related to
17 the qualifications, functions, and duties of a licensee under this chapter. A plea or
18 verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a
19 conviction within the meaning of this provision. The board may take action when the
20 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal
21 or when an order granting probation is made suspending the imposition of sentence,
22 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the
23 person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting
24 aside the verdict of guilty, or dismissing the accusation, information, or indictment.

25 ...

26 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
27 abetting the violation of or conspiring to violate any provision or term of this chapter
28 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. . .

13. United States Code, title 18, section 2 states:

21 (a) Whoever commits an offense against the United States or aids, abets,
22 counsels, commands, induces or procures its commission, is punishable as a principal.

23 (b) Whoever willfully causes an act to be done which if directly performed by
24 him or another would be an offense against the United States, is punishable as a
25 principal.

14. United States Code, title 21, section 843 states, in pertinent part:

26 (a) It shall be unlawful for any person knowingly or intentionally –

27 ...

1 (3) to acquire or obtain possession of a controlled substance by
2 misrepresentation, fraud, forgery, deception, or subterfuge. . .

3 **REGULATORY PROVISIONS**

4 15. California Code of Regulations, title 16, section 1769, subdivision (c) states:

5 When considering the suspension or revocation of a facility or a personal license
6 on the ground that the licensee or the registrant has been convicted of a crime, the
7 board, in evaluating the rehabilitation of such person and his present eligibility for a
8 license will consider the following criteria:

9 (1) Nature and severity of the act(s) or offense(s).

10 (2) Total criminal record.

11 (3) The time that has elapsed since commission of the act(s) or offense(s).

12 (4) Whether the licensee has complied with all terms of parole, probation,
13 restitution or any other sanctions lawfully imposed against the licensee.

14 (5) Evidence, if any, of rehabilitation submitted by the licensee.

15 16. California Code of Regulations, title 16, section 1770, states:

16 For the purpose of denial, suspension, or revocation of a personal or facility
17 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
18 Professions Code, a crime or act shall be considered substantially related to the
19 qualifications, functions or duties of a licensee or registrant if to a substantial degree it
20 evidences present or potential unfitness of a licensee or registrant to perform the
21 functions authorized by his license or registration in a manner consistent with the public
22 health, safety, or welfare.

23 **COSTS**

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

DRUG

18 18. Oxycodone is a Schedule II controlled substance as designated by Health and Safety
19 Code section 11054(b)(M), and is a dangerous drug pursuant to Business and Professions Code
20 section 4022.

1 19. Zolpidem Tartrate is a Schedule IV controlled substance as designated by Health and
2 Safety Code section 11057(d), and is a dangerous drug pursuant to Business and Professions
3 Code section 4022.

4 FIRST CAUSE FOR DISCIPLINE

5 **(February 13, 2017 Criminal Conviction for Conspiracy to Acquire or Obtain Possession of**
6 **a Controlled Substance by Misrepresentation, Fraud, Forgery, Deception, or Subterfuge)**

7 20. Respondent has subjected his pharmacist license to discipline under sections 490 and
8 4301, subdivision (l), of the Code, in that he was convicted of a crime that is substantially related
9 to the qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

10 a. On or about October 27, 2015, in a criminal proceeding entitled *United States*
11 *of America v. Hau Nhu Truong*, in the United States District Court for the Southern District of
12 California, case number 15-cr-02719-JAH-2, Respondent pled guilty to count one of the
13 Information. The Magistrate recommended that the District Judge accept Respondent's guilty
14 plea to count one of the Information which charged him with violating Title 21, United States
15 Code section 843(a)(3) and Title 18 United States Code section 2. On November 19, 2015, the
16 District Judge accepted Respondent's plea of guilty to count one of the Information. On or about
17 February 13, 2017, Respondent was convicted on his plea of guilty and judgment was entered
18 against him.

19 b. As a result of the conviction, Respondent was sentenced to probation for one
20 year and ordered to pay an assessment.

21 c. The facts that led to the conviction are that Respondent was employed as a
22 pharmacist at chain pharmacies located in Encinitas, Oceanside and Carlsbad, California. In 2013
23 and 2014, the Drug Enforcement Administration conducted an investigation of Respondent's
24 illegal activities performed while on duty as a pharmacist. The Drug Enforcement
25 Administration's investigation concluded that Respondent, a former pharmacist-in-charge and
26 current floating pharmacist, stole an estimated 300 prescriptions from the pharmacies who
27 employed him. Respondent verified and filled multiple fraudulent prescriptions for controlled
28 substances, presented by his co-conspirator and his co-conspirator's relative. He admitted that he

1 filled these fraudulent prescriptions without question. On one occasion, he even dismissed the
2 pharmacy technician and used her employee identification number to verify a fraudulent
3 prescription. The Drug Enforcement Administration concluded that the criminal conspiracy at
4 issue in Respondent's criminal case resulted in the loss of 75,000 tablets of oxycodone over a
5 two-year period, including the theft of 5,000 to 7,000, tablets a month.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(February 8, 2018 Criminal Conviction for Using Personal Information of Physician and**
8 **Obtaining Personal Identifying Information with Intent to Defraud)**

9 21. Respondent has subjected his pharmacist license to discipline under sections 490 and
10 4301, subdivision (I), of the Code, in that he was convicted of a crime that is substantially related
11 to the qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

12 a. On or about January 10, 2018, in a criminal proceeding entitled *The People of*
13 *the State of California v. Hau Nhu Troung*, in the San Diego Superior Court, case number
14 CD271550, Respondent pled guilty to count one, using personal identifying information of
15 another person, a physician in violation of Penal Code section 530.5, subdivision (a), a felony,
16 and count four, obtaining the personal identifying information with intent to defraud, in violation
17 of Penal Code section 530.5, subdivision (c)(1), a misdemeanor, of the Second Amended
18 Complaint-Felony. As part of his plea agreement, Respondent admitted that he "willfully
19 obtained the personal information of another and used it for an unlawful purpose and took real
20 property of a value in excess of \$950." Count two (misrepresentation as a physician to obtain
21 drugs), count three (use of personal identifying information of another), count five
22 (misrepresentation as a physician to obtain drugs) and count six (grand theft of real property)
23 were dismissed as part of the plea agreement.

24 b. As a result of the conviction, on February 8, 2018, Respondent was sentenced
25 to formal probation for three years, committed to the custody of the sheriff for 240 days
26 concurrent with the federal case described in paragraph 20, and to pay all applicable fees and
27 restitution. Respondent's counsel was ordered to submit proof Respondent reported to federal
28 custody.

1 c. The facts that led to the conviction are that on or about March 23, 2017 and
2 March 30, 2017, Respondent posed as a physician and "called in" prescriptions for drugs,
3 including a controlled substance, zolpidem tartrate to pharmacies. He then arrived at the
4 pharmacies to procure those drugs, using such methods as assuming the identity of another
5 person. Respondent was subsequently arrested and a criminal complaint was filed against him on
6 April 10, 2017. Thereafter, on May 7, 2017, Respondent stole a laptop worth \$1,616.21 from
7 Costco. He used the receipt from a prior purchase of an identical laptop to conceal the fact that
8 he had not paid for a second laptop.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Making False Documents)**

11 22. Respondent has subjected his pharmacist license to discipline under section 4301,
12 subdivision (g), of the Code for unprofessional conduct in that he knowingly verified and filled
13 multiple fraudulent prescriptions and called in false prescriptions, as described in paragraphs 18-
14 21, above, which are incorporated herein by reference.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Commission of Acts Involving Dishonesty, Fraud, Deceit & Corruption)**

17 23. Respondent has subjected his pharmacist license to discipline under section 4301,
18 subdivision (f), of the Code, for unprofessional conduct in that he stole controlled substances and
19 dangerous drugs from his employer/pharmacy, called in false prescriptions, attempted to obtain
20 drugs, using fraud, deceit, and dishonesty and stole a computer, as described in paragraphs 18-21,
21 above, which are incorporated herein by reference.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(Violation of California Statutes Regulating Controlled Substances)**

24 24. Respondent has subjected his pharmacist license to discipline under section 4301,
25 subdivision (o), of the Code, for unprofessional conduct, in that he knowingly violated Business
26 and Professions Code sections 4022, 4059, and 4060, as described in paragraphs 18-21, above,
27 which are incorporated herein by reference.

28 ///

1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Violation of Federal and State Laws and Regulations Governing Pharmacy)**

3 25. Respondent has subjected his pharmacist license to discipline under section 4301,
4 subdivision (j), of the Code, for unprofessional conduct in that he violated Title 21 U.S.C. section
5 843, subdivision (a)(3), Board of Pharmacy Regulations (California Code of Regulations, Title
6 16, Section 1700, et seq.), and the California Uniform Controlled Substances Act (Health and
7 Safety Code 11000, et seq.), when he obtained controlled substances and dangerous drugs using
8 fraud and deceit, as described in paragraphs 18-21, above, which are incorporated herein by
9 reference.

10 **SEVENTH CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct)**

12 26. Respondent has subjected his pharmacist license to discipline under Code section
13 4301, for unprofessional conduct in that he engaged in the activities described in paragraphs 18-
14 21 and 23 above, which are incorporated herein by reference.


15 **PRAYER**

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

- 18 1. Revoking or suspending Pharmacist License Number RPH 56425, issued to
- 19 Respondent Hau Nhu Truong;
- 20 2. Ordering Respondent Hau Nhu Truong to pay the Board of Pharmacy the reasonable
- 21 costs of the investigation and enforcement of this case, pursuant to Business and Professions
- 22 Code section 125.3; and,
- 23 3. Taking such other and further action as deemed necessary and proper.

24
25 DATED: _____

2/28/18



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

1 XAVIER BECERRA
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
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10 **STATE OF CALIFORNIA**

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13 **10413 Rosedust Glen Drive**
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ACCUSATION

15 **Pharmacist License No. RPH 56425**

16 Respondent.

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 October 5, 2004, the Board of Pharmacy issued Pharmacist License
23 Number RPH 56425 to Hau Nhu Truong (Respondent). The Pharmacist License was in full force
24 and effect at all times relevant to the charges brought herein and expired on October 31, 2016.

25 On January 26, 2016, an Interim Suspension Order suspended the Pharmacist License and
26 Respondent was prohibited from practicing as a pharmacist in the State of California until a final
27 decision on the Accusation in this matter, or until the interim suspension order is modified or
28 vacated.

1 **JURISDICTION**

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 Section 4300, subdivision (a) of the Code states: "Every license issued may be
6 suspended or revoked."

7 4. Section 4300.1 of the Code states:

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

12 **STATUTORY PROVISIONS**

13 5. Section 482 of the Code states:

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

- 16 (a) Considering the denial of a license by the board under Section 480; or
17 (b) Considering suspension or revocation of a license under Section 490.

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

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

24 7. Section 493 of the Code states:

25 Notwithstanding any other provision of law, in a proceeding conducted by a board
26 within the department pursuant to law to deny an application for a license or to suspend
27 or revoke a license or otherwise take disciplinary action against a person who holds a
28 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, and the board may inquire into the
circumstances surrounding the commission of the crime in order to fix the degree of
discipline or to determine if the conviction is substantially related to the qualifications,

1 functions, and duties of the licensee in question.

2 As used in this section, "license" includes "certificate," "permit," "authority," and
3 "registration."

4 8. Section 4022 of the Code states:

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

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

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

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

15 9. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
16 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
17 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

18 10. Section 4060 of the Code states, in pertinent part, that no person shall possess any
19 controlled substance, except that furnished to a person upon the prescription of a physician,
20 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.
21 2746.51, a nurse practitioner pursuant to Section 2836.1, or a

22 11. Section 4301 of the Code states in pertinent part:

23 The board shall take action against any holder of a license who is guilty of
24 unprofessional conduct or whose license has been issued by mistake. Unprofessional
25 conduct shall include, but is not limited to, any of the following:

26 ...

27 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit,
28 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.

...

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

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...
(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

...
(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...

12. United States Code, title 18, section 2 states:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

13. United States Code, title 21, section 843 states, in pertinent part:

(a) It shall be unlawful for any person knowingly or intentionally –

...
(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge. . .

REGULATORY PROVISIONS

14. California Code of Regulations, title 16, section 1769, subdivision (c) states:

When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

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- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

15. California Code of Regulations, title 16, section 1770, states:

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

COSTS

16. 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.

DRUG

17. Oxycodone is a Schedule II controlled substance as designated by Health and Safety Code section 11054(b)(M), and is a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(February 13, 2017 Criminal Conviction for Conspiracy to Acquire or Obtain Possession of Controlled Substance by Misrepresentation, Fraud, Forgery, Deception, or Subterfuge)

18. Respondent has subjected his pharmacist license to discipline under sections 490 and 4301, subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

1 a. On or about October 27, 2015, in a criminal proceeding entitled *United States*
2 *of America v. Hau Nhu Truong*, in the United States District Court for the Southern District of
3 California, case number 15-cr-02719-JAH-2, Respondent pled guilty to count one of the
4 Information. The Magistrate recommended that the District Judge accept Respondent's guilty
5 plea to count one of the Information. On November 19, 2015, the District Judge accepted
6 Respondent's plea of guilty to count one of the Information. On or about February 13, 2017,
7 Respondent was convicted on his plea of guilty to violating Title 21, United States Code section
8 843(a)(3) and Title 18 United States Code section 2 and judgment was entered against him.

9 b. As a result of the conviction, Respondent was sentenced to probation for one
10 year and ordered to pay an assessment.

11 c. The facts that led to the conviction are that Respondent was employed as a
12 pharmacist at chain pharmacies located in Encinitas, Oceanside and Carlsbad, California. In
13 2013 and 2014, the Drug Enforcement Administration conducted an investigation of
14 Respondent's illegal activities performed while on duty as a pharmacist. The Drug Enforcement
15 Administration's investigation concluded that Respondent, a former pharmacist-in-charge and
16 floating pharmacist stole an estimated 300 prescriptions from the pharmacies who employed him.
17 Respondent verified and filled multiple fraudulent prescriptions for controlled substances,
18 presented by his co-conspirator and his co-conspirator's relative. He admitted that he filled these
19 fraudulent prescriptions without question. On one occasion, he even dismissed the pharmacy
20 technician and used her employee identification number to verify a fraudulent prescription. The
21 Drug Enforcement Administration concluded that the criminal conspiracy at issue in
22 Respondent's criminal case resulted in the loss of 75,000 tablets of oxycodone over a two year
23 period, including the theft of 5,000 to 7,000 tablets a month.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Making False Documents)**

26 19. Respondent has subjected his pharmacist license to discipline under section 4301,
27 subdivision (g) of the Code for unprofessional conduct in that he knowingly verified and filled
28 multiple fraudulent prescriptions, as described in paragraph 18, above.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Commission of Acts Involving Dishonesty, Fraud, Deceit & Corruption)**

3 20. Respondent has subjected his pharmacist license to discipline under section 4301,
4 subdivision (f) of the Code for unprofessional conduct in that he stole controlled substances and
5 dangerous drugs from his employer/pharmacy using fraud, deceit, and dishonesty, as described in
6 paragraph 18, above.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Violation of California Statutes Regulating Controlled Substances)**

9 21. Respondent has subjected his pharmacist license to discipline under section 4301,
10 subdivision (o) of the Code for unprofessional conduct in that he knowingly violated Business
11 and Professions Code sections 4022, 4059, and 4060, as described in paragraph 18, above.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 **(Violation of Federal and State Laws and Regulations Governing Pharmacy)**

14 22. Respondent has subjected his pharmacist license to discipline under section 4301,
15 subdivision (j) of the Code for unprofessional conduct in that he violated Title 21 U.S.C. section
16 843, subdivision (a)(3), Board of Pharmacy Regulations (California Code of Regulations, Title
17 16, Section 1700, et seq.), and the California Uniform Controlled Substances Act (Health and
18 Safety Code 11000, et seq.), when he obtained controlled substances using fraud and deceit, as
19 described in paragraph 18, above.

20 **SIXTH CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct)**

22 23. Respondent has subjected his pharmacist license to discipline action under Code
23 section 4301 for unprofessional conduct in that he engaged in the activities described in
24 paragraph 18 above, which is incorporated herein by reference.

25 **PRAYER**

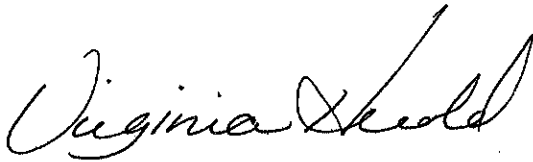
26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Board of Pharmacy issue a decision:
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1. Revoking or suspending Pharmacist License Number RPH 56425, issued to Hau Nhu Truong;
2. Ordering Hau Nhu Truong 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:

3/4/17



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

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**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of the Interim Suspension Order
Against:

Case No. 5528

OAH No. 2016010120

HAU NHU TRUONG

INTERIM SUSPENSION ORDER

Pharmacist License No. RPH 56425

Respondent.

Administrative Law Judge, Alan S. Meth having presided over the above-entitled matter, having reviewed and considered the Petition for Interim Suspension Order including the Memorandum of Points and Authorities and the Declarations and Exhibits filed in support thereof; any Opposition to the Petition for Interim Suspension Order and any Declarations and Exhibits filed in support thereof; oral argument; and any stipulations made on the record by Respondent Hau Nhu Truong and Complainant Virginia K. Herold through their respective counsel;

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. This is a proper case for the issuance of an interim order of suspension in that Respondent Hau Nhu Truong has been convicted of a crime substantially related to the practice of pharmacy;

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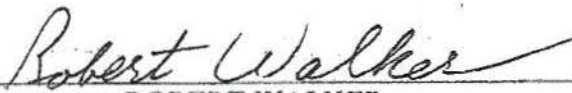
2. Permitting Respondent Hau Nhu Truong to continue to practice as a pharmacist will endanger the public health, safety, and welfare;

3. Therefore, pending further order from the Office of Administrative Hearings, Pharmacist License No. RPH 56425 issued to Hau Nhu Truong, shall be, and hereby is immediately suspended, and Respondent Hau Nhu Truong, is hereby immediately prohibited from practicing as a pharmacist in the State of California until a final decision on the Accusation that will be filed in this matter, or until this interim suspension order is modified or vacated;

4. Hau Nhu Truong understands that the Board is required to file an Accusation within fifteen (15) days of the issuance of an interim suspension order and he is entitled to a hearing on the Accusation within thirty (30) days after he files a notice of defense and a decision to be rendered on the Accusation no later than thirty (30) days after submission of the matter, as is set forth in Business and Professions Code section 494(f). Respondent waives his right to the statutory deadlines set forth in Business and Professions Code section 494 which require that an Accusation be filed within fifteen days (15) days of the issuance of an interim suspension order, a hearing on the Accusation be held within thirty (30) days following the filing of a notice of defense and a decision to be rendered on the Accusation no later than thirty (30) days after submission of the matter.

5. A copy of this Interim Order of Suspension shall be served on Respondent via Overnight Mail Delivery Service, Certified Mail and First Class Mail at his address of record on file with the Board of Pharmacy.

IT IS SO ORDERED on this 26th day of January, 2016.


ROBERT WALKER
PRESIDING ADMINISTRATIVE LAW JUDGE