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

11 In the Matter of the Accusation Against:
12 **PASCAL A. BUI**
13 **947 Burman Drive**
14 **San Jose, CA 95111**
15 **Pharmacy Technician Registration No. TCH**
124958
16 Respondent.

Case No. 5730

ACCUSATION

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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 July 20, 2012, the Board of Pharmacy issued Pharmacy Technician
23 Registration No. TCH 124958 to Pascal A. Bui (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought in this
25 Accusation and will expire on January 31, 2018, unless renewed.

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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 4011 of the Code provides that the Board shall administer and enforce both
6 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
7 Act [Health & Safety Code, § 11000 et seq.].

8 5. Section 4300 of the Code states, in relevant part:

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

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

13 "(1) Suspending judgment.

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

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

16 "(4) Revoking his or her license.

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

19 ...

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

25 6. Section 4300.1 of the Code states:

26 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
27 operation of law or by order or decision of the board or a court of law, the placement of a license
28 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board

1 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
2 proceeding against, the licensee or to render a decision suspending or revoking the license."

3 STATUTES

4 7. Section 4301 of the Code states, in relevant part:

5 "The board shall take action against any holder of a license who is guilty of unprofessional
6 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

7 Unprofessional conduct shall include, but is not limited to, any of the following:

8 ...

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

12 ...

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

15 8. Section 4059 of the Code states, in relevant 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. A person may not furnish any
18 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
19 veterinarian, or naturopathic doctor pursuant to Section 3640.7."

20 9. Section 4060 of the Code states:

21 "No person shall possess any controlled substance, except that furnished to a person upon
22 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
23 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
24 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
25 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
26 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
27 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
28 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,

1 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
2 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
3 labeled with the name and address of the supplier or producer.

4 "This section does not authorize a certified nurse-midwife, a nurse practitioner, a physician
5 assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices."

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

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

13 11. Health and Safety Code section 11350, subdivision (a), states:

14 "Except as otherwise provided in this division, every person who possesses (1) any
15 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
16 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
17 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
18 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
19 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
20 licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of
21 Section 1170 of the Penal Code."

22 12. Section 4022 of the Code states:

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

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

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1 Pharmerica, including surveillance video which captured the activities of Respondent when he
2 was working at the pharmacy on various dates.

3 18. As part of her investigation, the Board Inspector interviewed Respondent on
4 September 29, 2015. Respondent's attorney was present. During the interview, Respondent
5 admitted to the Board Inspector that from the middle of January of 2015 until the end of May of
6 2015, he stole on average 1 to 3 bottles of PCS a shift. Respondent admitted that he stole about
7 32 to 34 pints of PCS from Pharmerica and that he started "stocking up" because he was thinking
8 of leaving Pharmerica because of the stress.

9 19. During the interview by the Board Inspector, Respondent explained his process by
10 which he took the PCS out of the Pharmerica. He explained that when he was working in the
11 narcotics room of the pharmacy, he would put a bottle of the PCS under the bubble cards in a
12 basket. When he left the room, he would take the basket with the PCS bottle and put it in an
13 unfrequented drug aisle of Pharmerica. Respondent further explained that he would return to the
14 aisle and place the bottles into a brown bag and take them out of the pharmacy. He also indicated
15 that sometimes he would just take an empty bag out with him so in case he was stopped by
16 anyone, it would look like a normal routine for him.

17 20. Respondent told the Board Inspector that he used the PCS when he went to bed and
18 before or after his shifts. He further explained that he would mix about 2 ounces of the PCS with
19 a coke about 3-4 times a day. Respondent told the Board Inspector that he did not have a
20 prescription for PCS. Respondent told the Board Inspector that he was not currently taking PCS
21 because he decided to stop after getting into two car accidents.

22 21. On October 14, 2015, the Board received a six-page statement from Respondent as
23 requested by the Board Inspector. The statement was signed under the penalty of perjury and
24 documented what was said during the interview on September 29, 2015.

25 22. Following an inspection at Pharmerica, the Board Inspector received and reviewed
26 purchase records and dispensing records from Pharmerica from May 1, 2014 to May 31, 2015.
27 The Board's audit and investigation confirmed a loss of 74.5 pints of PCS from Pharmerica.

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FIRST CAUSE FOR DISCIPLINE
(Committed Act Involving Dishonesty, Fraud, or Deceit)
(Bus. & Prof. Code, § 4301, subd. (f))

23. Respondent has subjected his Pharmacy Technician Registration to disciplinary action under Code section 4301, subdivision (f), in that he stole PCS from his employer, Pharmerica. The circumstances are explained in paragraphs 16 through 22, above.

SECOND CAUSE FOR DISCIPLINE
(Violation of Laws Relating to Controlled Substance)
(Bus. & Prof. Code, § 4301, subd. (j))

24. Respondent has subjected his Pharmacy Technician Registration to disciplinary action under Code section 4031, subdivision (j), in that he violated state laws relating to controlled substances, including Health and Safety Code, section 11350, subdivision (a) (possessing controlled substances), when he stole PCS from his employer. The circumstances are more fully explained in paragraphs 16 through 22, above.

THIRD CAUSE FOR DISCIPLINE
(Furnishing Dangerous Drugs without a Prescription)
(Bus.& Prof. Code, § 4059)

25. Respondent has subjected his Pharmacy Technician Registration to disciplinary action under Code section 4059, in that he furnished and used PCS, a controlled substance, without a prescription on numerous occasions from January 2015 to May 2015. The circumstances are more fully explained in paragraphs 16 through 22, above.

FOURTH CAUSE FOR DISCIPLINE
(Possession of Controlled Substance without a Prescription)
(Bus. & Prof. Code, § 4060)

26. Respondent has subjected his Pharmacy Technician Registration to disciplinary action under Code section 4060, in that he illegally possessed PCS, a controlled substance, without a prescription, on numerous occasions from January 2015 to May 2015. The circumstances are more fully explained in paragraphs 16 through 22, above.

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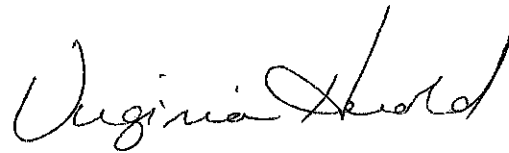
PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 124958, issued to Pascal A. Bui;
2. Ordering Pascal A. Bui 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;
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

5/6/16



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

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