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

12 In the Matter of the Accusation Against:	Case No. 5882
13 KEVIN XOB YANG 14 6617 Orr Street San Diego, CA 92111 15 Pharmacy Technician Registration 16 No. TCH 98840 17 Respondent.	A C C U S A T I O N

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19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.
23 2. On or about February 8, 2010, the Board issued Pharmacy Technician Registration
24 Number TCH 98840 to Kevin Xob Yang (Respondent). The Pharmacy Technician Registration
25 expired on May 31, 2015, and has not been renewed.

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JURISDICTION

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

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

5. 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.

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STATUTORY PROVISIONS

6. 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.

7. 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.

8. 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, and the board may inquire into the circumstances surrounding the commission of the crime in order

1 to fix the degree of discipline or to determine if the conviction is substantially related
2 to the qualifications, functions, and duties of the licensee in question.

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

5 9. Section 4301 of the Code states:

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

10 ...

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

14 ...

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

17 ...

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

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, subdivision (b) states:

(b) 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:

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

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

8 For the purpose of denial, suspension, or revocation of a personal or facility
9 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
10 Professions Code, a crime or act shall be considered substantially related to the
11 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.

12 **COSTS**

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

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(September 8, 2015 Criminal Conviction for Possession of Controlled Substance**
21 **Paraphernalia on August 11, 2013)**

22 13. Respondent has subjected his registration to discipline under sections 490 and 4301,
23 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
24 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

25 a. On or about September 8, 2015, in a criminal proceeding entitled *People of the*
26 *State of California v. Kenneth Xob Yang*, in Fresno County Superior Court, case number
27 M13928612, Respondent was convicted on his plea of guilty to violating Health and Safety Code
28 section 11364.1(a), possession of controlled substance paraphernalia, a misdemeanor.

1 b. As a result of the convictions, on November 4, 2015, Respondent was
2 sentenced to serve the upper term of three years in the San Diego County Jail, with pre-custody
3 credit for 125 days, followed by 18 months of supervised probation. The term was ordered to be
4 served concurrent with the term ordered in case number CE344879, below. Respondent was
5 ordered to pay fees and fines, plus restitution to the victim.

6 c. The facts that led to the convictions are that on or about August 12, 2015, the
7 California Highway Patrol (CHP) was notified by a corporate investigator that a San Diego
8 trucking company experienced a theft of 26 Specialized Bicycles where Respondent was
9 employed as a security guard. The trucking company had video surveillance that implicated
10 Respondent in the theft. During the course of the investigation, a warrant was obtained to search
11 Respondent's residence. In addition to six Specialized Bicycles, they found packing boxes
12 containing clothing pens, soap, laundry detergent, diapers, deodorant, books, stereo equipment,
13 tools, batteries, and other assorted items. All of the items were confirmed stolen from
14 Respondent's employer. Respondent admitted to the CHP officers that he was the only person
15 working security at the trucking company, and he would take a little each time he worked. He
16 stated he either sold or gave away 19 bicycles, and he also sold stolen items on Ebay. The
17 estimated value of the stolen items was \$101,079.00.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(October 20, 2015 Criminal Conviction for**

20 **Fraudulent Appropriation by an Employee in July 2014)**

21 16. Respondent has subjected his registration to discipline under sections 490 and 4301,
22 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
23 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows: /

24 a. On or about October 20, 2015, in a criminal proceeding entitled *People of the*
25 *State of California v. Kenneth Xob Yang*, in San Diego County Superior Court, case number
26 CE344879, Respondent was convicted on his plea of guilty to violating Penal Code section 508,
27 fraudulent appropriation by an employee, a felony. In exchange for the plea, the court dismissed
28 an additional felony count of grand theft (Pen. Code, § 487(a)).

1 b. As a result of the conviction, on November 4, 2015, Respondent was sentenced
2 to serve 16 months in jail, with pre-custody credit for 108 days. Respondent was ordered to pay
3 fees and fines, plus restitution to the victim.

4 c. The facts that led to the conviction are that on or about July 22, 2014, an area
5 supervisor of a gas station chain in El Cajon contacted the California State Lottery's (CSL) Law
6 Enforcement Division reporting that an employee (Respondent) had stolen lottery Scratchers
7 during his working hours. Using the information provided, a CSL investigator was able to
8 document that 145 Scratchers had been stolen and cashed at eight retailers, including the victim
9 gas station, collecting a total of \$1,986 in prize money. The investigator obtained video and still
10 photos of surveillance footage taken at various retailers depicting Respondent cashing the
11 Scratchers. Respondent's work timecard for the period July 2, 2014 to July 14, 2014, coincided
12 with dates the Scratchers were cashed. The area supervisor contacted the El Cajon Police
13 Department. Respondent admitted responsibility for the loss, but never paid restitution to his
14 employer, as promised.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Commission of Acts Involving Moral Turpitude, Dishonesty, Fraud or Deceit)**

17 17. Respondent has subjected his registration to discipline under section 4301,
18 subdivisions (a) and (f) of the Code for unprofessional conduct in that his conduct, as described in
19 paragraphs 15 and 16 above, involved moral turpitude, dishonesty, fraud and/or deceit.

20 **PRAYER**

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

23 1. Revoking or suspending Pharmacy Technician Registration Number TCH 98840,
24 issued to Kevin Xob Yang;

25 2. Ordering Kevin Xob Yang to pay the Board of Pharmacy the reasonable costs of the
26 investigation and enforcement of this case, pursuant to Business and Professions Code section
27 125.3;

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

DATED: 8/15/16

Virginia Herold

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

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