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

11 In the Matter of the Accusation Against:

Case No. 5896

12 **SUSAN XIONG**
1661 W. Kanai Avenue
13 Porterville, CA 93257

ACCUSATION

14 **Pharmacy Technician Registration No. TCH**
15 **85081**

Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about August 7, 2008, the Board issued Pharmacy Technician Registration
22 Number TCH 85081 to Susan Xiong ("Respondent"). The pharmacy technician registration was
23 in full force and effect at all times relevant to the charges brought in this Accusation and will
24 expire on February 28, 2018, unless renewed.

25 **JURISDICTION**

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

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4. Code section 4300 states, in pertinent part:

(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 . . .

5. Code section 4300.1 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.

STATUTORY PROVISIONS

6. Code section 4301 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.

....

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

....

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

3

4 (o) Violating or attempting to violate, directly or indirectly, or assisting in
5 or abetting the violation of or conspiring to violate any provision or term of this
6 chapter or of the applicable federal and state laws and regulations governing
7 pharmacy, including regulations established by the board or by any other state or
8 federal regulatory agency

9 7. Code section 4060 states, in pertinent part:

10 No person shall possess any controlled substance, except that furnished to
11 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
12 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
13 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
14 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
15 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
16 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
17 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

18 8. Health and Safety Code section 11170 states that "[n]o person shall prescribe,
19 administer, or furnish a controlled substance for himself."

20 9. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, that
21 "[n]o person shall obtain or attempt to obtain controlled substances, or procure or attempt to
22 procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
23 misrepresentation, or subterfuge . . ."

24 COST RECOVERY

25 10. Code section 125.3 provides, in pertinent part, that a Board may request the
26 administrative law judge to direct a licentiate found to have committed a violation or violations of
27 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
28 enforcement of the case.

29 DRUG CLASSIFICATIONS

30 11. Phentermine 37.5 mg is a Schedule IV controlled substance as designated by Health
31 and Safety Code section 11057, subdivision (f)(4), and a dangerous drug within the meaning of
32 Code section 4022 in that it can only be obtained by a valid prescription. Phentermine 37.5 mg is
33 indicated for weight loss. "Adipex-P" is a brand of phentermine 37.5 mg.

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1 party that Respondent admitted to taking about 160 phentermine pills from the pharmacy. Later,
2 Officer V. went to Respondent's residence. Respondent admitted to Officer V. that she took a
3 bottle and a half of weight loss pills (phentermine) for her own personal use and that she had
4 placed them in her pocket.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

7 17. Respondent is subject to disciplinary action pursuant to Code section 4301,
8 subdivision (f), for unprofessional conduct, in that while on duty as a pharmacy technician at
9 CVS Pharmacy #35, Respondent committed acts involving moral turpitude, dishonesty, fraud,
10 deceit, or corruption, as follows: Respondent stole or diverted a total of approximately 160
11 tablets of phentermine 37.5 mg from the pharmacy for self-administration.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Self-Administration of a Controlled Substance)**

14 18. Respondent is subject to disciplinary action pursuant to Code section 4301,
15 subdivision (h), for unprofessional conduct, in that while employed and/or on duty as a pharmacy
16 technician at CVS Pharmacy #35, Respondent self-administered the controlled substance
17 phentermine without a valid or lawful prescription for the medication and/or used phentermine to
18 an extent or in a manner dangerous or injurious to herself, others and/or the public.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Violations of State Laws Regulating Controlled Substances)**

21 19. Respondent is subject to disciplinary action pursuant to Code section 4301,
22 subdivision (j), for unprofessional conduct, in that while on duty as a pharmacy technician at CVS
23 Pharmacy #35, Respondent did the following:

24 a. Respondent obtained the controlled substance phentermine by fraud, deceit,
25 misrepresentation, or subterfuge, in violation of Health and Safety Code section 11173,
26 subdivision (a).

27 b. Respondent possessed the controlled substance phentermine without a valid or lawful
28 prescription for the medication, in violation of Code section 4060.

1 FOURTH CAUSE FOR DENIAL

2 (Violations of the Pharmacy Law)

3 20. Respondent is subject to disciplinary action pursuant to Code section 4301,
4 subdivision (o), for unprofessional conduct, in that while employed and/or on duty as a pharmacy
5 technician at CVS Pharmacy #35, Respondent violated or attempted to violate, directly or
6 indirectly, a provision or term of the Pharmacy Law (Bus. & Prof. Code § 4300, et seq.),
7 specifically, Code section 4060.

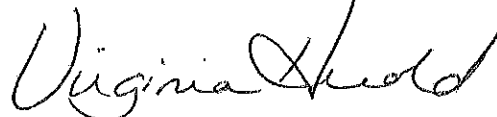
8 PRAYER

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

- 11 1. Revoking or suspending Pharmacy Technician Registration Number TCH 85081,
12 issued to Susan Xiong;
- 13 2. Ordering Susan Xiong to pay the Board of Pharmacy the reasonable costs of the
14 investigation and enforcement of this case, pursuant to Business and Professions Code section
15 125.3; and
- 16 3. Taking such other and further action as deemed necessary and proper.

17
18 DATED: _____

1/27/17



19 VIRGINIA HEROLD
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant

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