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

10 In the Matter of the Accusation Against:
11 **NICHOLAS NGUYEN BUI**
12 798 Tonga Court
San Jose, CA 95127
13 **Pharmacy Technician Registration No. TCH**
14 **136379**
15 Respondent.

Case No. 6052

A C C U S A T I O N

16
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 November 27, 2013, the Board issued Pharmacy Technician Registration
22 Number TCH 136379 to Nicholas Nguyen Bui (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on December 31, 2017, unless renewed.

25 **JURISDICTION**

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

1 4. Section 4300 of the Code states, in pertinent part:

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

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

6 "(1) Suspending judgment.

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

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

9 "(4) Revoking his or her license.

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

12 ". . . .

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

18 5. Section 4300.1 of the Code states:

19 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
20 operation of law or by order or decision of the board or a court of law, the placement of a license
21 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
22 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
23 proceeding against, the licensee or to render a decision suspending or revoking the license."

24 **STATUTORY PROVISIONS**

25 6. Section 4021 of the Code states:

26 "'Controlled substance' means any substance listed in Chapter 2 (commencing with Section
27 11053) of Division 10 of the Health and Safety Code."

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1 7. Section 4022 of the Code states:

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

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

6 ". . . .

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

9 8. Section 4301 of the Code states:

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

13 ". . . .

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

17 ". . . .

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

23 ". . . .

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

26 ". . . .

27 "(l) The conviction of a crime substantially related to the qualifications, functions, and
28 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13

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

16 ". . . .

17 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
18 violation of or conspiring to violate any provision or term of this chapter or of the applicable
19 federal and state laws and regulations governing pharmacy, including regulations established by
20 the board or by any other state or federal regulatory agency.

21 ". . . ."

22 9. Section 4060 of the Code states:

23 "No person shall possess any controlled substance, except that furnished to a person upon
24 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
25 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
26 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
27 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
28 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of

1 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
2 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
3 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
4 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
5 labeled with the name and address of the supplier or producer."

6 10. Section 490(a) of the Code provides, in pertinent part, that a board may suspend or
7 revoke a license on the ground that the licensee has been convicted of a crime substantially
8 related to the qualifications, functions, or duties of the business or profession for which the
9 license was issued.

10 11. Section 11170 of the Health and Safety Code provides:

11 "No person shall prescribe, administer, or furnish a controlled substance for himself."

12 COSTS

13 12. Section 125.3 of the Code states, 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.

17 DRUGS

18 13. Xanax is a brand name for alprazolam, which is a medication commonly used to treat
19 anxiety, is a controlled substance per Health and Safety Code section 11057(d)(1), and is a
20 dangerous drug per Code section 4022.

21 14. Tylenol with codeine is a brand name for acetaminophen with codeine, which is a
22 medication commonly used to treat pain, is a controlled substance per Health and Safety Code
23 section 11056(e)(2), and is a dangerous drug per Code section 4022.

24 15. Tramadol is a medication commonly used to treat pain, is a controlled substance per
25 Health and Safety Code section 11057(g), and is a dangerous drug per Code section 4022.

26 16. Promethazine with codeine is a medication commonly used to treat cough or flu
27 symptoms, is a controlled substance per Health and Safety Code section 11058(c)(1), and is a
28 dangerous drug per Code section 4022.

1 **BACKGROUND**

2 17. In 2015 and 2016, while working as a pharmacy technician for Rite-Aid Pharmacy in
3 Cupertino, CA, Respondent stole controlled substances for his own use. Respondent stole
4 roughly 275 tablets of alprazolam, 110 tablets of Xanax, 100 tablets of tramadol, 250 tablets of
5 Tylenol with codeine, and 100 ml of promethazine with codeine. The estimated value of the
6 stolen medication was \$1,131.45.

7 18. With respect to the promethazine with codeine, Respondent consumed the medication
8 while on shift. On approximately ten occasions, Respondent brought the bottle to the store's
9 office and took sips. Respondent was captured on video drinking directly from the pharmacy
10 stock bottle.

11 19. Rite-Aid Pharmacy's management confronted Respondent, who admitted the theft and
12 was terminated.

13 20. On January 20, 2017, in the Superior Court of California for the County of Santa
14 Clara, in the case entitled *People of the State of California v. Nicholas Bui*, Case No. B1687121,
15 Respondent pled no contest to and was convicted of violating Penal Code section 504/487 (grand
16 theft), a felony.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Possess Controlled Substance)**

19 21. Respondent is subject to disciplinary action under Code section 4301(j) and/or (o), in
20 conjunction with Code section 4060, in that Respondent possessed a controlled substance without
21 a valid prescription. The circumstances are described above in "Background."

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Self-Administer Controlled Substance)**

24 22. Respondent is subject to disciplinary action under Code section 4301(h), and/or under
25 Code section 4301(j) and/or (o) in conjunction with Health and Safety Code section 11170, in that
26 Respondent self-administered and/or self-furnished a controlled substance. The circumstances
27 are described above in "Background."

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Act Involving Dishonesty)**

3 23. Respondent is subject to disciplinary action under Code section 4301(f), in that
4 Respondent did an act involving moral turpitude, dishonesty, fraud, deceit, or corruption. The
5 circumstances are described above in "Background."

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(Criminal Conviction)**


8 24. Respondent is subject to disciplinary action under Code sections 490(a) and/or
9 4301(l), in that Respondent was convicted of an offense substantially related to the duties,
10 functions, or qualifications of a licensee. The circumstances are described above in
11 "Background."

12 **PRAYER**

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

- 15 1. Revoking or suspending Pharmacy Technician Registration Number TCH 136379,
16 issued to Nicholas Nguyen Bui;
- 17 2. Ordering Nicholas Nguyen Bui to pay the Board of Pharmacy the reasonable costs of
18 the investigation and enforcement of this case, pursuant to Business and Professions Code section
19 125.3; and,
- 20 3. Taking such other and further action as is deemed necessary and proper.

21
22 DATED: 6/30/17


23 VIRGINIA HEROLD
24 Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 *Complainant*

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