

1 BILL LOCKYER, Attorney General
of the State of California
2 SHERRY L. LEDAKIS, State Bar No. 131767
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101
P.O. Box 85266
5 San Diego, CA 92186-5266
Telephone: (619) 645-2078
6 Facsimile: (619) 645-2061
Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

12 ANTHONY D. PHAM

13 Respondent.

Case No. 2852

OAH No.

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

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15
16 FINDINGS OF FACT

17 1. On or about May 13, 2005, Complainant Patricia F. Harris, in her official
18 capacity as the Executive Officer of the Board of Pharmacy, filed Accusation No. 2852 against
19 Anthony D. Pham (Respondent) before the Board of Pharmacy.

20 2. On or about June 30, 2004, the (Board) issued Pharmacy Technician
21 Registration No. TCH 57172 to Respondent. The Pharmacy Technician Registration was in full
22 force and effect at all times relevant to the charges brought herein and will expire on December
23 31, 2005, unless renewed.

24 3. On or about May 24, 2005, Carrie L. Johnson, an employee of the
25 Department of Justice, served by Certified and First Class Mail a copy of Accusation No. 2852,
26 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code
27 sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which
28 was and is 16187 Cache Street, Fountain Valley, CA 92708. A copy of the Accusation, the

1 related documents, and Declaration of Service are attached as exhibit A, and are incorporated
2 herein by reference.

3 4. Service of the Accusation was effective as a matter of law under the
4 provisions of Government Code section 11505, subdivision (c).

5 5. On or about June 10, 2005, the aforementioned documents were returned
6 by the U.S. Postal Service marked "Unclaimed." A copy of the postal returned documents are
7 attached hereto as exhibit B, and are incorporated herein by reference.

8 6. Government Code section 11506 states, in pertinent part:

9 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
10 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
11 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
12 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

13 7. Respondent failed to file a Notice of Defense within 15 days after service
14 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
15 Accusation No. 2852.

16 8. California Government Code section 11520 states, in pertinent part:

17 "(a) If the respondent either fails to file a notice of defense or to appear at the
18 hearing, the agency may take action based upon the respondent's express admissions or
19 upon other evidence and affidavits may be used as evidence without any notice to
20 respondent."

21 9. Pursuant to its authority under Government Code section 11520, the Board
22 finds Respondent is in default. The Board will take action without further hearing and, based on
23 Respondent's express admissions by way of default and the evidence before it, contained in
24 exhibits A, B and C, finds that the allegations in Accusation No. 2852 are true.

25 DETERMINATION OF ISSUES

26 1. Based on the foregoing findings of fact, Respondent Anthony D. Pham has
27 subjected his Pharmacy Technician Registration No. TCH 57172 to discipline.

28 ///

1 2. A copy of the Accusation and the related documents and Declaration of
2 Service are attached.

3 3. The agency has jurisdiction to adjudicate this case by default.

4 4. The Board is authorized to revoke Respondent's Pharmacy Technician
5 Registration based upon the following violations alleged in the Accusation:

6 **July 27, 2004, Conviction for Petty Theft Orange County**

7 **Superior Court Case No. 04WM04062**

8 5. On February 3, 2004, Anthony D. Pham, respondent, entered Rite-Aid
9 located in Orange County, California. Respondent took and later admitted to stealing the
10 personal property of Rite-Aid.

11 6. On April 23, 2004, the Orange County District Attorney filed a
12 misdemeanor complaint entitled, *The People of the State of California vs. Anthony D. Pham*,
13 Case No. 04WM04602.

14 7. On July 27, 2004, in Case No. 04WM04602, respondent pled guilty to
15 violating Penal Code section 488-484(a), Petty Theft, a misdemeanor, and was ordered to pay a
16 fine of \$200, pay restitution of \$100 and was placed on three years informal probation.

17 **August 19, 2004, Conviction for Possession of Controlled Substance Paraphernalia,**
18 **Orange County Superior Court Case No. 04WM08041**

19 8. On July 4, 2004, the Orange Police Department stopped respondent for
20 questioning and learned that respondent was on probation and subject to search. The officers
21 searched respondent and found a set of car keys. Subsequently, they asked him where his car
22 was and respondent pointed it out to the officers. The officers asked respondent if they could
23 search his car. Respondent consented to the search. Inside respondent's car, the officers seized a
24 white beanie containing three glass pipes commonly used for smoking illegal narcotics. The
25 officers also seized a metal tin containing several small zip lock baggies which are commonly
26 used to transport illegal narcotics. Under questioning, respondent admitted to using illegal drugs.
27 One of the glass pipes contained residue of illegal drug usage.

28 ///


1 Decision on Respondent. The agency in its discretion may vacate the Decision and grant a
2 hearing on a showing of good cause, as defined in the statute.

3 This Decision shall become effective on September 22, 2005.

4 It is so ORDERED August 23, 2005

5
6 BOARD OF PHARMACY
7 DEPARTMENT OF CONSUMER AFFAIRS
8 STATE OF CALIFORNIA

8 70031856.wpd
9 DOJ docket number:SD2005700364

9 By 
10 STANLEY W. GOLDENBERG
Board President

10 Attachments:

- 11 Exhibit A: Accusation No.2852, Related Documents, and Declaration of Service
- 12 Exhibit B: Postal Return Documents
- 13 Exhibit C: Declaration of Sherry L. Ledakis

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Exhibit A
Accusation No. 2852,
Related Documents and Declaration of Service

1 BILL LOCKYER, Attorney General
of the State of California
2 SHERRY L. LEDAKIS, State Bar No. 131767
Deputy Attorney General
3 California Department of Justice
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BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2852

12 ANTHONY D. PHAM

OAH No.

13 16187 Cache Street
14 Fountain Valley, CA 92708

ACCUSATION

15 Pharmacy Technician Registration No. TCH
16 57172

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Patricia Harris (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about June 30, 2004, the Board of Pharmacy issued Pharmacy
23 Technician Registration No. TCH 57172 to Anthony D. Pham (Respondent). Said license will
24 expire on December 31, 2005, unless renewed.

25 **JURISDICTION**

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

1 4. Section 4301 of the Code states:

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

6
7 (f) The commission of any act involving moral turpitude, dishonesty,
8 fraud, deceit, or corruption, whether the act is committed in the course of relations as a
9 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

10
11 (j) The violation of any of the statutes of this state or of the United States
12 regulating controlled substances and dangerous drugs.

13
14 (l) The conviction of a crime substantially related to the qualifications,
15 functions, and duties of a licensee under this chapter. The record of conviction of a
16 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States
17 Code regulating controlled substances or of a violation of the statutes of this state
18 regulating controlled substances or dangerous drugs shall be conclusive evidence of
19 unprofessional conduct. In all other cases, the record of conviction shall be conclusive
20 evidence only of the fact that the conviction occurred. The board may inquire into the
21 circumstances surrounding the commission of the crime, in order to fix the degree of
22 discipline or, in the case of a conviction not involving controlled substances or dangerous
23 drugs, to determine if the conviction is of an offense substantially related to the
24 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of
25 guilty or a conviction following a plea of nolo contendere is deemed to be a conviction
26 within the meaning of this provision. The board may take action when the time for
27 appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an
28 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.

.....
(p) Actions or conduct that would have warranted denial of a license.

19 5. Section 4300 of the Code states:

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

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

24 (1) Suspending judgment.

25 (2) Placing him or her upon probation.

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

28 (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.

6. Section 118, subdivision (b), of the Code provides that the
suspension/expiration/surrender/cancellation of a license shall not deprive the Board of

1 jurisdiction to proceed with a disciplinary action during the period within which the license may
2 be renewed, restored, reissued or reinstated.

3 7. Section 125.3 of the Code provides, in pertinent part, that the Board may
4 request the administrative law judge to direct a licentiate found to have committed a violation or
5 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
6 and enforcement of the case.

7 **Alleged Facts:**

8 **July 27, 2004, Conviction for Petty Theft Orange County**
9 **Superior Court Case No. 04WM04062**

10 8. On February 3, 2004, Anthony D. Pham, respondent, entered Rite-Aid
11 located in Orange County, California. Respondent took and later admitted to stealing the
12 personal property of Rite-Aid.

13 9. On April 23, 2004, the Orange County District Attorney filed a
14 misdemeanor complaint entitled, *The People of the State of California vs. Anthony D. Pham*,
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16 10. On July 27, 2004, in Case No. 04WM04602, respondent pled guilty to
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18 fine of \$200, pay restitution of \$100 and placed on three years informal probation.

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21 11. On July 4, 2004, the Orange Police Department stopped respondent for
22 questioning and learned that respondent was on probation and subject to search. The officers
23 searched respondent and found a set of car keys. Subsequently, they asked him where his car
24 was and respondent pointed it out to the officers. The officers asked respondent if they could
25 search his car. Respondent consented to the search. Inside respondent's car, the officers seized a
26 white beanie containing three glass pipes commonly used for smoking illegal narcotics. The
27 officers also seized a metal tin containing several small zip lock baggies which are commonly
28 used to transport illegal narcotics. Under questioning, respondent admitted to using illegal drugs.
One of the glass pipes contained residue of illegal drug usage.

1 substance paraphernalia which constitutes conduct that would have warranted the denial of a
2 pharmacy technician's license as set forth in paragraphs 8 through 13 above.

3 **PRAYER**

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

6 1. Revoking or suspending Pharmacy Technician Registration No. TCH
7 57172, issued to Anthony D. Pham.

8 2. Ordering Anthony D. Pham to pay the Board of Pharmacy the reasonable
9 costs of the investigation and enforcement of this case, pursuant to Business and Professions
10 Code section 125.3;

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

12 DATED: 5/13/05
13

14 *P. J. Harris*
15 PATRICIA HARRIS
16 Executive Officer
17 Board of Pharmacy
18 Department of Consumer Affairs
19 State of California
20 Complainant

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Exhibit B
Postal Return Documents

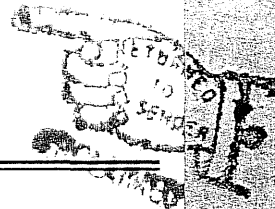


7160 3901 9848 8027 9224

RETURN RECEIPT REQUESTED

POSTAGE & FEES PAID
FIRST CLASS
PERMIT NO. 2403
SAN DIEGO, CA
U.S. POSTAL SERVICE
BIRMINGHAM, AL 35203

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
OFFICE OF ATTORNEY GENERAL
110 WEST A STREET, SUITE 1100
P.O. BOX 85266
SAN DIEGO, CA 92186-5266



Anthony D. Pham
16187 Cache Street
Fountain Valley, CA 92708



5/26/05
~~5/31/05~~
6/10/05

ATTORNEY GENERAL
SAN DIEGO
2005 JUN 15 AM 8:53

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Exhibit C
Certification of Costs

1 BILL LOCKYER, Attorney General
of the State of California
2 SHERRY L. LEDAKIS, State Bar No. 131767
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
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12 ANTHONY D. PHAM

13 Respondent.

Case No. 2852
OAH No.

CERTIFICATION OF COSTS:
DECLARATION OF SHERRY L.
LEDAKIS

[Business and Professions Code section
125.3]

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15
16
17 I, SHERRY L. LEDAKIS, hereby declare and certify as follows:

18 1. I am a Deputy Attorney General employed by the California Department of
19 Justice (DOJ), Office of the Attorney General (Office). I am assigned to the Licensing Section in
20 the Civil Division of the Office. I have been designated as the representative to certify the costs
21 of prosecution by DOJ and incurred by the Board of Pharmacy in this case. I make this
22 certification in my official capacity and as an officer of the court.

23 2. I represent the Complainant, Patricia F. Harris, Executive Officer of the
24 Board of Pharmacy, in this action. I was assigned to handle this case on or around March 28,
25 2005.

26 3. As the Deputy Attorney General assigned to handle this case, I performed
27 a wide variety of tasks that were necessary for the prosecution of this matter, including, but not
28 limited to (1) conducting an initial case evaluation; (2) obtaining, reading and reviewing the

1 investigative material, as needed; (3) reviewing and drafting pleadings, correspondence,
 2 memoranda, and other case-related documents; (4) researching relevant points of law and fact;
 3 (5) consulting and/or meeting with colleague deputies, supervisory staff, client staff, and
 4 investigators; (6) and attempting to communicate and correspond with Anthony D. Pham; (7)
 5 preparing this Default Decision and Order; (8) obtaining costs of investigation and prosecution;
 6 and (9) preparing the Declaration of Sherry L. Ledakis

7 4. I am personally familiar with the time recording and billing practices of
 8 DOJ and the procedure for charging the client agency for the reasonable and necessary work
 9 performed on a particular case. Whenever work is performed on a case, it is the duty of the
 10 employee to keep track of the time spent and to report that time on DOJ time sheets at or near the
 11 time of the tasks performed. Based upon the time reported through July 21, 2005, DOJ has billed
 12 or will bill the Board for the following amount of time spent working on the above entitled case.

Employee/ Position	Fiscal Year	No. of Hours	Hourly Rate	Total Charges
James M. Ledakis Deputy Attorney General	2004-2005	2.00	139	278.00
Sherry L. Ledakis Deputy Attorney General	2004-2005	2.25	139	\$312.75
				TOTAL: \$590.75

19
 20 5. To the best of my knowledge the items of cost set forth in this certification
 21 are correct and were necessarily incurred in this case.

22 I certify under penalty of perjury under the laws of the State of California that the
 23 foregoing is true and correct.

24 Executed on July 21, 2005, in the City of San Diego, California.

25
 26 
 27 SHERRY L. LEDAKIS
 Deputy Attorney General

28 Declarant