

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. AC-2008-3281

TAYLOR PHAN
a.k.a. TAYLOR THANH PHAN
893 Lincoln Avenue
Pomona, CA 91767
Pharmacy Technician
Registration No. TCH 62860

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about August 20, 2009, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. AC-2008-3281 against Taylor Phan (“Respondent”) before the Board of Pharmacy.

2. On or about June 13, 2005, the Board of Pharmacy (“Board”) issued Pharmacy Technician Registration No. TCH 62860 to Respondent. The Pharmacy Technician Registration No. was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2010, unless renewed.

///
///

1 3. On or about September 15, 2009, Carolina Lopez-Castillo, an employee of the
2 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. AC-
3 2008-3281, Statement to Respondent, Notice of Defense, Request for Discovery, and Government
4 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,
5 which was and is:

6 **893 Lincoln Avenue**
7 **Pomona, CA 91767.**

8 A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

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

11 5. Government Code section 11506 states, in pertinent part:

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

17 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
18 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
19 AC-2008-3281.

20 7. California Government Code section 11520 states, in pertinent part:

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

25 8. Pursuant to its authority under Government Code section 11520, the Board finds
26 Respondent is in default. The Board will take action without further hearing and, based on the
27 evidence on file herein, finds that the allegations in Accusation No. AC-2008-3281 are true.

28 9. The total cost for investigation and enforcement in connection with the Accusation
are \$2,469.75 as of November 10, 2009.

///

///

1 **DETERMINATION OF ISSUES**

2 1. Based on the foregoing findings of fact, Respondent Taylor Phan has subjected his
3 Pharmacy Technician Registration No. TCH 62860 to discipline.

4 2. A copy of the Accusation is attached.

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

6 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
7 Registration No. TCH 62860 based upon the following violations alleged in the Accusation:

8 a. Business and Professions Code section 4301, subdivision (l), in conjunction with
9 California Code of Regulations, title 16, section 1770, in that Respondent was convicted of a
10 crime substantially related to the qualifications, functions or duties of a licensed pharmacy
11 technician. Specifically, on or about June 27, 2008, after pleading nolo contendere, Respondent
12 was convicted of one misdemeanor count of violating Health and Safety Code section 11364
13 [possession of drug paraphernalia), in the criminal proceeding entitled The People of The State of
14 California v. Taylor Thanh Phan (Super. Ct. San Bernardino County, 2008, No. MWV109251).
15 Respondent was court ordered to pay a fine of \$273.00 and placed on 1 year probation. The
16 circumstances surrounding the conviction are that on or about October 31, 2006, Respondent was
17 issued a misdemeanor citation for possession of drug paraphernalia, after officers from the
18 Ontario Police Department conducted a cursory search of Respondent's vehicle and observed a
19 glass smoking pipe on the seat.

20 **RECORD**

21 The Record upon which this default decision and order are based is located at the
22 Sacramento headquarters of the Board.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 62860, heretofore issued to Respondent Taylor Phan, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This decision shall become effective on April 29, 2010.

It is so ORDERED on March 30, 2010.

Kenneth H. Schell

KENNETH H. SCHELL, BOARD PRESIDENT
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

60501622.DOC
DOJ Matter ID: LA2009602877

Attachment:

Exhibit A: Accusation No.AC-2008-3281

Exhibit A
Accusation No. AC-2008-3281

1 EDMUND G. BROWN JR.
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 ALVARO MEJIA
Deputy Attorney General
4 State Bar No. 216956
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-0083
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **TAYLOR PHAN,**
13 **a.k.a. TAYLOR THANH PHAN**
14 **893 Lincoln Avenue**
15 **Pomona, CA 91767**
16 **Pharmacy Technician**
17 **Registration No. TCH 62860**
18 Respondent.

Case No. AC-2008-3281

ACCUSATION

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 June 13, 2005, the Board of Pharmacy ("Board") issued Pharmacy
23 Technician Registration No. TCH 62860 to Taylor Phan, aka Taylor Thanh Phan ("Respondent").
24 The Pharmacy Technician Registration was in full force and effect at all times relevant to the
25 charges brought herein and will expire on November 30, 2010, unless renewed.

26 ///
27 ///
28 ///

1 JURISDICTION

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

4 STATUTORY PROVISIONS

5 4. Section 118, subdivision (b), states, in pertinent part, that the suspension, expiration,
6 surrender, or cancellation of a license shall not deprive the Board jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

9 5. Section 4059 states, in pertinent part, that a person may not furnish any dangerous
10 drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
11 naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device,
12 except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
13 naturopathic doctor pursuant to Section 3640.7.

14 6. Section 4060 states:

15 "No person shall possess any controlled substance, except that furnished to a person upon
16 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
17 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
18 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
19 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
20 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
21 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
22 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
23 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
24 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
25 labeled with the name and address of the supplier or producer.

26 ///

27 ///

28 ///

1 Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
2 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
3 devices."

4 7. Section 4301 states:

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

26 ///

27 ///

28 ///

1 REGULATORY PROVISIONS

2 8. California Code of Regulations, title 16, section 1770, states:

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

9 COST RECOVERY

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

14 FIRST CAUSE FOR DISCIPLINE

15 (Conviction of a Substantially-Related Crime)

16 10. Respondent is subject to disciplinary action under section 4301, subdivision (l), in
17 conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was
18 convicted of a crime substantially related to the qualifications, functions or duties of a licensed
19 pharmacy technician, as follows:

20 a. On or about June 27, 2008, after pleading nolo contendere, Respondent was
21 convicted of one misdemeanor count of violating Health and Safety Code section 11364
22 [possession of drug paraphernalia), in the criminal proceeding entitled *The People of The State of*
23 *California v. Taylor Thanh Phan* (Super. Ct. San Bernardino County, 2008, No. MWV109251).
24 Respondent was court ordered to pay a fine of \$273.00 and placed on 1 year probation. The
25 circumstances surrounding the conviction are that on or about October 31, 2006, Respondent was
26 issued a misdemeanor citation for possession of drug paraphernalia, after officers from the
27 Ontario Police Department conducted a cursory search of Respondent's vehicle and observed a
28 glass smoking pipe on the seat.

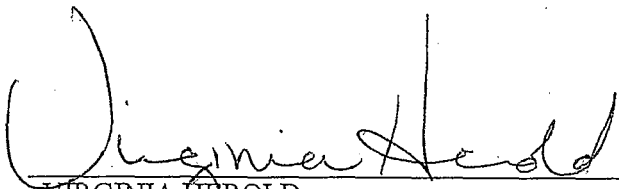
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. Number TCH 62860, issued to Respondent;
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 8/20/09



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

DOJ Matter ID: LA2009602877
50474999.doc
am(6-30-09)