

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

In the Matter of the Accusation Against:

Case No. 4561

KEVIN TRUNG NGUYEN

OAH No. 2013050870

12238 Misty Blue Ct.
San Diego, CA 92131

Pharmacy Technician Registration
No. TCH 42171

Respondent.

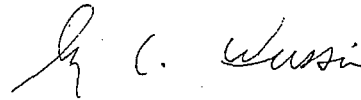
DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on January 13, 2014.

It is so ORDERED on December 13, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

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PROPOSED DECISION

On October 3, 2013, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Desiree I. Kellogg, Deputy Attorney General, represented the complainant.

Respondent Kevin Trung Nguyen represented himself.

The matter was submitted on October 3, 2013.

FACTUAL FINDINGS

1. On April 19, 2013, Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California (hereafter, "Board") filed Accusation No. 4561 in her official capacity. Respondent filed a timely Notice of Defense.
2. On May 21, 2002, the Board issued Original Pharmacy Technician Registration Number TCH 42171 to respondent to work as a pharmacy technician in California.
3. On April 2, 2012, in the Superior Court of San Diego County, respondent pleaded guilty and was convicted of violating Penal Code section 350, subdivision (a)(2), possession for sale of 1,000 or more counterfeit marks, a felony. On September 10, 2012, the court placed respondent on probation for three years on condition, among others, he perform five days of community service to be completed by March 10, 2013, pay restitution

in the amount of \$3,000, pay a fine of \$155.00, and pay other fines and fees. Respondent paid the restitution that day. The court reduced the charge to a misdemeanor

Respondent's conviction is substantially related to the qualifications, functions, or duties of a registered pharmacy technician. (Cal. Code Regs., tit. 16, §1770.)

4. The facts and circumstances of the offense are as follows:

Adam Jefferson, a criminal investigator with the United States Department of Homeland Security, learned of several internet based Craigslist advertisements of various trademarked name-brand purses, handbags, wallets, and accessories for sale. He traced the telephone number associated with the advertisements to respondent's retail appliance business in San Diego, California. He engaged an investigator who worked with a company that investigated theft and counterfeiting of registered trademarks, copyrights, and patents. The investigator acted in an undercover capacity. On January 27, 2012, the undercover investigator went to respondent's appliance store and purchased a replica of a Louis Vuitton wallet for \$90.00.

Based upon his investigation, Investigator Jefferson obtained a search warrant to search respondent's appliance store. On February 10, 2012, a search of the appliance store was conducted. Homeland Security Investigators and counterfeit trademark experts observed and seized 56 trademarked items stored and displayed for sale within the store, including such brands as Louis Vuitton, Gucci, Chanel, and Hermes. The investigators determined that the items bore counterfeit trademarks and that the total value of the items was approximately \$35,000.00. Several of the items were found in boxes addressed to respondent.

5. Judith Nurse is a supervising inspector for the Board and has been a licensed pharmacist since 1974. She worked as a pharmacist for 20 years and has been an inspector for 19 years. She is familiar with the duties and responsibilities of pharmacists and pharmacy technicians. She testified at the hearing as an expert in the field of pharmacy.

Ms. Nurse testified that pharmacy technicians have to be honest and exercise good judgment. They have access to the pharmacy's inventory, patients' medical records, and patients' billing records. In her opinion, a dishonest pharmacy technician could steal drugs and sell them on the street, misuse medical information about a patient, fraudulently bill a customer or insurance company, or substitute a cheaper or counterfeit drug for a more expensive and legitimate one. She pointed out that the pharmacy industry was closely regulated by the state and federal governments. Ms. Nurse testified that respondent's conviction of possession for sale of counterfeit marks is substantially related to the duties of a pharmacy technician. She reasoned that if respondent were dishonest enough to advertise on Craigslist and sell counterfeit products in place of legitimate ones, he was capable of substituting a generic or counterfeit drug for a legitimate one and selling the legitimate one on the street. She noted that controlled substances were more valuable than Louis Vuitton handbags.

6. Respondent testified he made a mistake but that he was a good citizen and had not known that what he did was wrong. He testified he learned that his actions were illegal after he was arrested and spoke to his attorney.

Respondent has never worked as a pharmacy technician. He owns an appliance business in La Mesa, where he sells and repairs household appliances. He has operated the business for 17 years. He testified that his license "is all I have left" and that he wanted to keep it for "maybe later in the future."

Respondent has two daughters for whom he provides child support.

Respondent testified he had until the end of the year to complete the community service obligation imposed as part of probation. But the court records indicate he had until March 10, 2013 to complete it, and he has not done so. Respondent paid restitution as required and is paying the fines and fees.

7. Respondent presented no evidence of rehabilitation. He offered no character letters, and no witnesses testified in his behalf. Respondent has not taken any classes or performed any volunteer work.

8. The Board incurred costs for the investigation and enforcement of this matter in the amount of \$1,900.00 for the services of the Attorney General. The total amount is reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 4301 provides in part:

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

[¶] . . . [¶]

(1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. . . The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense 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

2. Business and Professions Code section 490 provides in part:

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere

3. Cause to revoke or suspend respondent's pharmacy technician registration pursuant to Business and Professions Code section 4301, subdivision (l), and section 490 was established by Findings 3, 4, and 5 in that respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a pharmacy technician.

4. Cause to revoke or suspend respondent's pharmacy technician registration pursuant to Business and Professions Code section 4300, subdivision (f), was established by Findings 3 and 4 in that respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, and corruption.

5. California Code of Regulations, title 16, section 1769, subdivision (b), provides in part:

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) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

6. The evidence introduced in this matter points conclusively toward revocation of respondent's pharmacy technician registration. Respondent committed the offense less than two years ago, and he remains on probation. His offense was an ongoing criminal enterprise that required him to obtain counterfeit products from Asia, advertise them on the internet, store them in his appliance store, and sell them. Respondent's claim that he did not know that what he was doing was illegal is not credible. Respondent has not complied with the term of probation that required him to complete five days of community service by March 10, 2013. Respondent presented no evidence of rehabilitation.

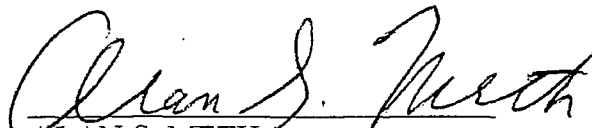
A pharmacy technician has access to the pharmacy's supply of drugs, patient information, insurance information, computers, and so forth. Drugs are as good as cash, and the temptation to steal drugs and either use them or sell them is always present. Pharmacy technicians have to be honest and moral. They have to accurately input information into a computer and follow the rules. They must exercise good judgment. The field of pharmacy is one of the most regulated fields in the state. The failure of a pharmacy technician to follow the rules can cause harm to customers of the pharmacy and the public. Respondent's criminal conduct calls into question his honesty, his judgment, and his ability and willingness to follow the rules.

7. Cause to order respondent to reimburse the Board for its costs of investigation and enforcement of this matter in the amount of \$1,900.00 was established by reason of Finding 8.

ORDER

1. Pharmacy Technician Registration No. TCH 42171 issued to respondent Kevin Trung Nguyen is revoked.
2. Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$1,900.00.

DATED: October 25, 2013


ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

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Attorneys for Complainant

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10 **BOARD OF PHARMACY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
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14 **12238 Misty Blue Court**
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A C C U S A T I O N

15 **Pharmacy Technician Registration No.**
16 **TCH 42171**

17 Respondent.

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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, Department of Consumer Affairs.

23 2. On or about May 21, 2002, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 42171 to Kevin Trung Nguyen (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on October 31, 2013, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, 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 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
11 deceit, or corruption, whether the act is committed in the course of relations as a
12 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

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23 **REGULATORY PROVISIONS**

24 10. California Code of Regulations, title 16, section 1769, states:

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26 (b) When considering the suspension or revocation of a facility or a personal
27 license on the ground that the licensee or the registrant has been convicted of a crime,
28 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 10, 2012 Criminal Conviction for Possession For Sale of Counterfeit Marks)**

21 13. 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 April 2, 2012, in a criminal proceeding entitled *People of the State*
25 *of California v. Kevin Nguyen*, San Diego County Superior Court, case number CD239248,
26 Respondent entered a plea of guilty to violating Penal Code section 350, subdivision (a)(2),
27 possession for sale of 1,000 or more counterfeit marks, to wit, Louis Vuitton products, a felony.

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1 The court dismissed two additional felony counts of violating Penal Code section 350,
2 subdivision (a)(2) pursuant to a plea agreement.

3 b. As a result of Respondent's plea agreement, on or about September 10, 2012,
4 the court granted Respondent's motion to reduce the felony to a misdemeanor in that victim
5 ~~restitution in the amount of \$3,000 was paid and deemed satisfied. Respondent was granted three~~
6 years felony probation to the court, and sentenced to one day in the custody of the sheriff, with
7 credit for one day. Respondent was further ordered to perform five days of Public Work Service,
8 pay fees, fines, and restitution, and comply with felony probation terms.

9 c. The facts that led to the conviction are that on or about February 10, 2012,
10 Respondent was arrested following an undercover investigation by the U.S. Immigration and
11 Customs Enforcement into Respondent's sale of counterfeit Louis Vuitton, Gucci, and Hermes
12 merchandise on Craig's List. Respondent sold a counterfeit Louis Vuitton wallet to an
13 undercover investigator. A subsequent search warrant on Respondent's business and residence
14 resulted in the seizure of additional counterfeit items.

15 **SECOND CAUSE FOR DISCIPLINE**

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

17 14. Respondent has subjected his registration to discipline under section 4301,
18 subdivision (f) of the Code for unprofessional conduct in that he possessed and sold counterfeit
19 merchandise as described in paragraph 13, above, acts involving dishonesty, fraud, deceit or
20 corruption.

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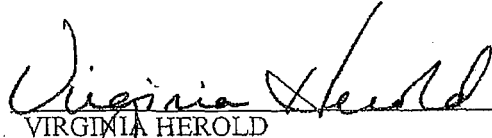
PRAYER

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

1. ~~Revoking or suspending Pharmacy Technician Registration Number TCH 42171, issued to Kevin Trung Nguyen;~~
2. Ordering Kevin Trung Nguyen to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED:

4/19/13



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

SD2013704874