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

In the Matter of the Accusation Against:

Case No. 4791

JONATHAN NGUYEN 21011 Kausch Circle Huntington Beach, CA 92646

Pharmacy Technician Registration No. TCH 79791

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on June 24, 2015.

It is so ORDERED on June 17, 2015.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

By

AMARYLIS GUTIERREZ Board President

I		
1	Kamala D, Harris	-
2	Attorney General of California JAMES M. LEDAKIS	
3	Supervising Deputy Attorney General DIANE DE KERVOR	
4	Deputy Attorney General State Bar No. 174721	
5	110 West "A" Street, Suite 1100 San Diego, CA 92101	
6	P.O. Box 85266 San Diego, CA 92186-5266	
7	Telephone: (619) 645-2611 Facsimile: (619) 645-2061	
8	Attorneys for Complainant	
9	BEFORE THE BOARD OF PHARMACY	
10		CONSUMER AFFAIRS CALIFORNIA
11		
12	In the Matter of the Accusation Against:	Case No. 4791
13	JONATHAN NGUYEN 21011 Kausch Circle	OAH No. 2014050330
14	Huntington Beach, CA 92646	STIPULATED SURRENDER OF LICENSE AND ORDER
15	Pharmacy Technician Registration No. TCH 79791	
16	Respondent.	
17		NTTID to a difference the smoothes to the shores
18		EED by and between the parties to the above-
19	entitled proceedings that the following matters a	
20		TIES
21	1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.	
22	She brought this action solely in her official capacity and is represented in this matter by Kamala	
23	D. Harris, Attorney General of the State of Calif	ornia, by Diane de Kervor, Deputy Attorney
24	General.	
25		presenting himself in this proceeding and has
26	chosen not to exercise his right to be represented by counsel.	
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,		Stipulated Surrender of License (Case No. 4791) ¹

1	3. On or about December 17, 2007, the Board of Pharmacy issued Pharmacy Technician
2	Registration No. TCH 79791 to Jonathan Nguyen (Respondent). The Pharmacy Technician
3	Registration will expire on June 30, 2015, unless renewed.
4	JURISDICTION
5	4. Accusation No. 4791 was filed before the Board of Pharmacy (Board), Department of
6	Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
7	statutorily required documents were properly served on Respondent on March 6, 2014.
8	Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
9	No. 4791 is attached as Exhibit A and incorporated by reference.
10	ADVISEMENT AND WAIVERS
11	5. Respondent has carefully read, and understands the charges and allegations in
12	Accusation No. 4791. Respondent also has carefully read, and understands the effects of this
13	Stipulated Surrender of License and Order.
14	6. Respondent is fully aware of his legal rights in this matter, including the right to a
15	hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
16	his own expense; the right to confront and cross-examine the witnesses against him; the right to
17	present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
18	the attendance of witnesses and the production of documents; the right to reconsideration and
19	court review of an adverse decision; and all other rights accorded by the California
20	Administrative Procedure Act and other applicable laws.
21	7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
22	every right set forth above.
23	CULPABILITY
24	8. Respondent understands that the charges and allegations in Accusation No. 4791, if
25	proven at a hearing, constitute cause for imposing discipline upon his Pharmacy Technician
26	Registration.
27	9. For the purpose of resolving the Accusation without the expense and uncertainty of
28	further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
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Stipulated Surrender of License (Case No. 4791)

basis for the charges in the Accusation and that those charges constitute cause for discipline.
 Respondent hereby gives up his right to contest that cause for discipline exists based on those
 charges.

4 10. Respondent understands that by signing this stipulation he enables the Board to issue 5 an order accepting the surrender of his Pharmacy Technician Registration without further process.

RESERVATION

7 11. The admissions made by Respondent herein are only for the purposes of this
8 proceeding, or any other proceedings in which the Board of Pharmacy or other professional
9 licensing agency is involved, and shall not be admissible in any other criminal or civil
10 proceeding.

<u>CONTINGENCY</u>

12. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent 12 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may 13 14 communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that 15 he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board 16 17 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this 18 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not 19 20 be disqualified from further action by having considered this matter.

The parties understand and agree that Portable Document Format (PDF) and facsimile
 copies of this Stipulated Surrender of License and Order, including Portable Document Format
 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Surrender of License and Order is intended by the parties to be an
integrated writing representing the complete, final, and exclusive embodiment of their agreement.
It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order

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Stipulated Surrender of License (Case No. 4791)^T

may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
 executed by an authorized representative of each of the parties.

3 15. In consideration of the foregoing admissions and stipulations, the parties agree that
4 the Board may, without further notice or formal proceeding, issue and enter the following Order:

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<u>ORDER</u>

IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 79791, issued
to Respondent Jonathan Nguyen, is surrendered and accepted by the Board of Pharmacy.

The surrender of Respondent's Pharmacy Technician Registration and the acceptance
 of the surrendered license by the Board shall constitute the imposition of discipline against
 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
 Respondent's license history with the Board of Pharmacy.

Respondent shall lose all rights and privileges as a pharmacy technician in California
 as of the effective date of the Board's Decision and Order.

Respondent shall cause to be delivered to the Board his pocket license and, if one was
issued, his wall certificate on or before the effective date of the Decision and Order.

4. Respondent may not apply for any license, permit, or registration from the board for
three (3) years from the effective date of this decision. Respondent stipulates that should he apply
for any license from the board on or after the effective date of this decision, all allegations set
forth in the accusation shall be deemed to be true, correct and admitted by respondent when the
board determines whether to grant or deny the application.

Respondent shall satisfy all requirements applicable to that license as of the date the
application is submitted to the board, including, but not limited to certification by a nationally
recognized body prior to the issuance of a new license. Respondent is required to report this
surrender as disciplinary action.

25 5. Respondent shall pay the agency its costs of investigation and enforcement in the
amount of \$5,457.50 prior to issuance of a new or reinstated license.

27 6. If Respondent should ever apply or reapply for a new license or certification, or
28 petition for reinstatement of a license, by any other health care licensing agency in the State of

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Stipulated Surrender of License (Case No. 4791)

California, all of the charges and allegations contained in Accusation, No. 4791 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 4/28/15

JONATHAN NGUYEN Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated:

SD2013705552

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4/29/15

Respectfully submitted,

KAMALA D. HARRIS Attorney General of California JAMES M. LEDAKIS Supervising Deputy Attorney General

jone de Kower

DIANE DE KERVOR Deputy Attorney General Attorneys for Complainant

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Exhibit A

Accusation No. 4791

Kamala D, Harris	
Attorney General of California JAMES M. LEDAKIS	
Supervising Deputy Attorney General DIANE DE KERVOR	
Deputy Attorney General State Bar No. 174721	
110 West "A" Street, Suite 1100	
San Diego, CA 92101 P.O. Box 85266	
San Diego, CA 92186-5266 Telephone: (619) 645-2611	
Facsimile: (619) 645-2061 Attorneys for Complainant	
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DEPARTMENT OF	F PHARMACY CONSUMER AFFAIRS CALIFORNIA
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Huntington Beach, CA 92646	ACCUSATION
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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.
6. Section 4301 of the Code states:
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:
(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.
·····
(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.
(o) Violating or attempting to violate, directly or indirectly, or assisting in
or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing
pharmacy, including regulations established by the board or by any other state or federal regulatory agency.
7. Section 4022 of the Code states
Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:
(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.
(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.
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2	(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.
3	8. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
4	dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
5	veterinarian, or naturopathic doctor pursuant to Section 3640.7.
6	9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
•7	controlled substance, except that furnished to a person upon the prescription of a physician,
8	dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.
9	10. United States Code, title 21, section 843 states, in pertinent part:
10	(a) It shall be unlawful for any person knowingly or intentionally –
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12	(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;
13	mint of the second star Barly, and a harden and a
14	COSTS
15	11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
16	administrative law judge to direct a licentiate found to have committed a violation or violations of
17	the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
18	enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
19	renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
20	included in a stipulated settlement.
21	DRUGS
22	12. <u>Hydrocodone bitartate/acetaminophen</u> , also known by the brand names Vicodin,
23	Norco, Zydone, Maxidone, Lortab, Lorcet, Hydrocet, Co-Gesic, and Anexsia, is a narcotic
24	Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4),
25	and is a dangerous drug pursuant to Business and Professions Code section 4022. Hydrocodone is
26	used as a narcotic analgesic in the relief of pain.
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1	13. <u>Promethazine with Codeine</u> , also known by the brand name Phenergan with Codeine,
2	is a narcotic Schedule 5 controlled substance designated by Health and Safety Code section
3	11058(C)(1), and is a dangerous drug pursuant to Business and Professions Code section 4022.
4	Promethazine with Codeine is used to treat coughs.
5	FIRST CAUSE FOR DISCIPLINE
6	(Commission of Acts Involving Dishonesty, Fraud, Deceit & Corruption)
7	14. Respondent has subjected his registration to discipline under section 4301,
8	subdivision (f) of the Code for unprofessional conduct in that Respondent stole controlled
9	substances and dangerous drugs from his employer/pharmacy using fraud, deceit, and dishonesty
10	as follows.
11	a. On January 27, 2012, while working as a Pharmacy Technician at Vons
12	Pharmacy (PHY 43066) in Huntington Beach, California, Respondent was videotaped hiding a
13	bottle of Promethazine with Codeine under paper in the recycling bin and then exiting the
14	pharmacy with the medication.
15	b. Respondent admitted to loss prevention staff at the Pharmacy that in December
16	of 2011 he had stolen two containers of hydrocodone/ APAP for personal use, but claimed to have
17	returned the narcotics to the store.
18	c. Respondent admitted to loss prevention staff at the Pharmacy that he had
19	previously stolen one acne cream from the pharmacy.
20	SECOND CAUSE FOR DISCIPLINE
21	(Violation of California Statutes Regulating Controlled Substances)
22	15. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
23	Code for unprofessional conduct in that Respondent knowingly violated Business and Professions
24	Code sections 4022, 4059, and 4060, as described in paragraph 14, above.
25	THIRD CAUSE FOR DISCIPLINE
26	(Violating Federal Laws Governing Pharmacy)
27	16. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the
28	Code for unprofessional conduct in that Respondent violated Title 21 U.S.C. section 843,
	4 Accusation

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1	subdivision (a)(3) when he obtained controlled substances using fraud and deceit, as described in		
2	paragraph 14, above.		
3	PRAYER		
4	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,		
5	and that following the hearing, the Board of Pharmacy issue a decision:		
6	1. Revoking or suspending Pharmacy Technician Registration Number TCH 79791,		
7	issued to Jonathan Nguyen;		
8	2. Ordering Jonathan Nguyen to pay the Board of Pharmacy the reasonable costs of the		
9	investigation and enforcement of this case, pursuant to Business and Professions Code section		
10	125.3;		
11	3. Taking such other and further action as deemed necessary and proper.		
12	DATED: 2/19/14 uginated		
13	Executive Officer		
14	Board of Pharmacy Department of Consumer Affairs State of California		
15	Complainant		
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$_1 \parallel$	Kamala D. Harris	
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4	Deputy Attorney General State Bar No. 174721	
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5	San Diego, CA 92101 P.O. Box 85266	
6	San Diego, CA 92186-5266 Telephone: (619) 645-2611	
7	Facsimile: (619) 645-2061 Attorneys for Complainant	
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4	The expiration, cancellation, forfeiture, or suspension of a board-issued
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7	
8	6. Section 4301 of the Code states:
9	The board shall take action against any holder of a license who is guilty of
10	unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
11	not limited to, any of the following:
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13	(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
14	a licensee or otherwise, and whether the act is a felony or misdemeanor or not.
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16	(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.
17 18	
10	(o) Violating or attempting to violate, directly or indirectly, or assisting in
20	or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or
21	federal regulatory agency.
22	7. Section 4022 of the Code states
23	Dangerous drug" or "dangerous device" means any drug or device unsafe
24	for self-use in humans or animals, and includes the following:
25	(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.
26	(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a," "Rx only," or words of
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	2 Accusation

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8. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7.
9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
controlled substance, except that furnished to a person upon the prescription of a physician,
dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.
10. United States Code, title 21, section 843 states, in pertinent part:
(a) It shall be unlawful for any person knowingly or intentionally –
••••
(3) to acquire or obtain possession of a controlled substance by
misrepresentation, fraud, forgery, deception, or subterfuge;
· · · · ·
COSTS
11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
administrative law judge to direct a licentiate found to have committed a violation or violations of
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enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
included in a stipulated settlement.
DRUGS
12. Hydrocodone bitartate/acetaminophen, also known by the brand names Vicodin,
Norco, Zydone, Maxidone, Lortab, Lorcet, Hydrocet, Co-Gesic, and Anexsia, is a narcotic
Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4),
and is a dangerous drug pursuant to Business and Professions Code section 4022. Hydrocodone is
used as a narcotic analgesic in the relief of pain.
3 Accusation

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13. Promethazine with Codeine, also known by the brand name Phenergan with Codeine, 1 is a narcotic Schedule 5 controlled substance designated by Health and Safety Code section 2 11058(C)(1), and is a dangerous drug pursuant to Business and Professions Code section 4022. 3 Promethazine with Codeine is used to treat coughs. 4 FIRST CAUSE FOR DISCIPLINE 5 6 (Commission of Acts Involving Dishonesty, Fraud, Deceit & Corruption) Respondent has subjected his registration to discipline under section 4301, 14. 7

8 subdivision (f) of the Code for unprofessional conduct in that Respondent stole controlled
9 substances and dangerous drugs from his employer/pharmacy using fraud, deceit, and dishonesty
10 as follows.

a. On January 27, 2012, while working as a Pharmacy Technician at Vons
Pharmacy (PHY 43066) in Huntington Beach, California, Respondent was videotaped hiding a
bottle of Promethazine with Codeine under paper in the recycling bin and then exiting the
pharmacy with the medication.

b. Respondent admitted to loss prevention staff at the Pharmacy that in December
of 2011 he had stolen two containers of hydrocodone/ APAP for personal use, but claimed to have
returned the narcotics to the store.

c. Respondent admitted to loss prevention staff at the Pharmacy that he had
previously stolen one acne cream from the pharmacy.

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SECOND CAUSE FOR DISCIPLINE

(Violation of California Statutes Regulating Controlled Substances)
 15. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
 Code for unprofessional conduct in that Respondent knowingly violated Business and Professions
 Code sections 4022, 4059, and 4060, as described in paragraph 14, above.

THIRD CAUSE FOR DISCIPLINE

(Violating Federal Laws Governing Pharmacy) 16. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the Code for unprofessional conduct in that Respondent violated Title 21 U.S.C. section 843,

4

Accusation

1	subdivision (a)(3) when he obtained controlled substances using fraud and deceit, as described in		
2	paragraph 14, above.		
3	PRAYER		
4	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,		
5	and that following the hearing, the Board of Pharmacy issue a decision:		
6	1. Revoking or suspending Pharmacy Technician Registration Number TCH 79791,		
7	issued to Jonathan Nguyen;		
8	2. Ordering Jonathan Nguyen to pay the Board of Pharmacy the reasonable costs of the		
9	investigation and enforcement of this case, pursuant to Business and Professions Code section		
10	125.3;		
11	3. Taking such other and further action as deemed necessary and proper.		
12	DATED: 2/19/14 Jugina feed		
13	Executive Officer Board of Pharmacy		
14	Department of Consumer Affairs State of California		
15	Complainant		
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	5 Accusation		