

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

In the Matter of the Second Amended Accusation
Against:

VYKHANH THI TARR AKA VYKHANH
THI NGUYEN,

Pharmacist License No. RPH 64465,

Respondent.

Case No. 4911

OAH No. 2014060602

DECISION AFTER RECONSIDERATION

Glynda B. Gomez, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter on February 10 and 11, 2015, in Los Angeles, California. Deputy Attorney General Katherine Messana represented Complainant Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California. Benjamin Fenton, Attorney at law, represented Respondent Vy Khanh Thi Tarr also known as Vyknahn Thi Nguyen (Respondent) who was also present throughout the hearing. The matter was submitted to the ALJ on February 11, 2015.

The ALJ issued her Proposed Decision on March 5, 2015. The Proposed Decision of the Administrative Law Judge was submitted to the Board of Pharmacy ("Board"). After due consideration thereof, the Board adopted said proposed decision on April 1, 2015, to become effective on May 1, 2015. On April 20, 2015, Respondent filed a Petition for Reconsideration. On April 23, 2015, the Board issued an Order Granting Petition for Reconsideration and Stay of Execution of the Effective Date of Decision and Order. On May 12, 2015, the Board issued an Order Fixing Date for Submission of Argument. Written argument was timely received from both parties. On June 4, 2015, without taking new evidence, a quorum of the Board heard oral argument from Mr. Fenton and Ms. Messana.

The entire record, including written and oral argument, the transcript and exhibits from the hearing having been read and considered, the Board, pursuant to Government Code section 11521, hereby decides this matter as follows:

FACTUAL FINDINGS

1. Complainant filed the Second Amended Accusation in her official capacity. Respondent timely filed a Notice of Defense requesting a hearing.

2. On August 23, 2010, the Board issued Pharmacist License No. 64465 to Respondent. The license is in full force and effect and will expire on March 31, 2016, unless renewed.

3. On February 6, 2014, in the Superior Court of California, County of Orange, in Case No. 13WF1064 entitled the *People of the State of California v. Vy Khanh Thi Nguyen*, Respondent was convicted on her plea of guilty of six counts of violating Health and Safety Code section 11368, (forging or issuing a false prescription or possessing drugs secured by a forged prescription). Respondent was sentenced to 30 days in jail stayed, pending completion of 240 hours of community service and three years of probation with terms and conditions. At the time of the hearing, Respondent had completed 236 of the required 240 hours by volunteering at a community food bank. Respondent is scheduled to remain on probation until February of 2017.

4. As part of the plea agreement, Respondent wrote and signed a statement wherein she admitted that on "six separate occasions on or between 7-19-12 and 9-19-12 in the county of Orange, I willfully and unlawfully uttered a forged prescription for a narcotic drug in order for a person to unlawfully obtain that narcotic drug." (Exhibit 5)

5. The facts and circumstances of the conviction are as follows:

a. While employed as a pharmacist at the Ralph's Pharmacy in Costa Mesa, Respondent met Alan DeLaCirna (DeLaCirna), the brother of a friend of her boyfriend (now husband), at a party or social gathering at the friend's home around September 14, 2011. In conversation, Respondent revealed to DeLaCirna that she was a pharmacist. DeLaCirna told her that he had recently been in a serious car accident and was experiencing a lot of pain. DeLaCirna asked if Respondent could fill his prescription for him. Respondent agreed to fill the prescription. DeLaCirna gave Respondent the prescription which she placed in her pocket. Before leaving the gathering, Respondent exchanged cellular telephone contact information with DeLaCirna.

b. When Respondent returned to work at Ralph's Pharmacy the next day, she reviewed the prescription. She noted that the prescription was for three medications: Oxycodone, Norco and Xanax.

c. Oxycodone is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(M) and a dangerous drug as designated by Business and Professions Code section 4022.

d. Norco, Vicodin, Vicodin ES, Lortab, and Lorcet are brand names for compounds of dosages of acetaminophen and hydrocodone, a Schedule III controlled substance as designated

by Health and Safety Code section 11056, subdivision on (e)(4) and a dangerous drug as designated by Business and Professions Code section 4022.

e. Xanax is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(1) and a dangerous drug as designated by Business and Professions Code section 4022.

f. Respondent noted on the prescription that she called the prescribing doctor's office and spoke to someone named "Michael" who confirmed the prescription was legitimate. However, the prescriptions were not legitimate and were written on a stolen prescription pad. Respondent filled the prescription and then notified DeLaCirna by text message sent from her cellular telephone that the prescription was ready.

h. About 30 days later, DeLaCirna sent Respondent a text message asking her to refill the prescriptions. Although Respondent felt uncomfortable doing so, she refilled all three medications as DeLaCirna requested and did not contact the prescribing doctor's office again to verify the legitimacy of the prescriptions.

i. Soon after filling the second set of prescriptions, DeLaCirna began texting Respondent to notify her that he was sending other individuals to the pharmacy with prescriptions to be filled. DeLaCirna sent at least six other individuals, each with multiple prescriptions, from the same prescribing doctor, and Respondent filled all of the prescriptions as requested by DeLaCirna without verifying them with the prescribing doctor. The prescriptions included Schedule II, III and IV controlled substances and dangerous drugs including Norco, Xanax, and Oxycodone.

j. DeLaCirna and the other individuals that he sent to the pharmacy all paid with cash. Each of them provided Respondent with a prescription script which contained multiple medications written by the same prescribing doctor. Each prescription was written with multiple refills. All of these factors should have caused Respondent some concern about filling the prescriptions.

k. There was no evidence that Respondent received anything in return for filling the prescriptions, other than the customers' cash payments to the pharmacy.

6. Pharmacists perform their duties with a minimum amount of supervision, have access to controlled substances, provide patient information, customer service, drug compounding and assemble prescriptions. Pharmacists have substantial access to pharmacy inventory and good judgment is essential to the functions, duties and qualifications of a pharmacist. Respondent exercised extremely poor professional judgment on multiple occasions by filling the prescriptions for DeLaCirna and his associates and by not verifying each prescription with the prescriber.

7. At Respondent's request, Brian P. Jacks, M.D., F.A.A.C.P., a psychiatrist, conducted a psychiatric evaluation of Respondent. Dr. Jacks interviewed Respondent for two hours and administered the Minnesota Multiphasic Personality Inventory (MMPI-2). The evaluation consisted of reviewing some of the court documents, portions of a police report, interviewing Respondent and reviewing the results of the computerized analysis of the MMPI-2. Based upon his evaluation, Dr. Jacks opined that Respondent had mild anxiety and depression including sleep disturbance as a result of her criminal conviction and the attendant pending pharmacy board disciplinary action. Dr. Jacks also noted that Respondent received an elevated score in the paranoia scale of the MMPI-2. Dr. Jacks opined that Respondent was remorseful for her actions, had been naive in her dealings with DeLaCirna, and had developed skepticism of other people as a result of her criminal case. Dr. Jacks found no indication of psychiatric problems or addiction. Dr. Jacks opined that Respondent did not have any impairment that would prohibit her from safely practicing as a pharmacist. Dr. Jacks recommended that Respondent receive additional training in pharmacy law and professional responsibility. He further opined that Respondent was unlikely to commit similar violations in the future having learned from her mistakes. Dr. Jack's testimony on the last point was not persuasive because his evaluation was based only upon the circumstances as described by Respondent and his testing was based solely upon a self-reporting measure. Dr. Jack's opinion with respect to the likelihood of recidivism and recommendations were largely without foundation.

8. Respondent has worked for Park Pharmacy, a compounding pharmacy in Orange County for two years. Tina Sulic Saadeh, the Pharmacist in Charge, testified on Respondent's behalf. Park Pharmacy is a compounding pharmacy and rarely handles controlled substances. Any controlled substances on the premises are in a locked cabinet in the front of the pharmacy in full view of all pharmacists and technicians. Respondent is one of five pharmacists at Park Pharmacy. Respondent handles customers, checks prescriptions and verifies doctors' orders.

9. Ms. Saadeh found Respondent to be very responsible, diligent and a good communicator. She hired Respondent knowing that Respondent had been discharged from Ralph's for inappropriately filling a prescription. Respondent suffered the criminal conviction set forth in factual finding 3 above during her tenure at Park Pharmacy. Respondent disclosed the conviction and the pending Pharmacy Board accusation to Ms. Saadeh. Ms. Saadeh did some research on her own to review the allegations against Respondent and the substance of the criminal charges out of concern for her own pharmacist's license and the pharmacy Permit.¹ Ms.

¹ Park Pharmacy's Pharmacy Permit with Co-Owners Dennis Elias Saadeh and Tina Marie Sulic-Saadeh was the subject of a Pharmacy Board disciplinary order effective August 13, 2008, based upon shortages of Hydrocodone, Alprazolam and Methylphenidate at Park Pharmacy and the conviction of Dennis Saadeh for driving while under the influence of drugs and the unlawful possession of Hydrocodone, Methylphenidate, and Alprazolam. The Board of Pharmacy revoked the Pharmacy Permit and the Pharmacist's license of Dennis Saadeh. However, the revocations were stayed and both licenses were placed on probation for five years with terms and conditions. The probations were completed in 2013 without further incident.

Saadeh was sympathetic to Respondent's predicament having experienced Pharmacy Board discipline as a co-owner of Park Pharmacy. Ms. Saadeh found Respondent to be a valuable employee.

10. Pharmacists Dennis Saadeh and Larry Woodhouse, both of Park Pharmacy, provided letters of reference for Respondent attesting to her ethical and professional conduct while employed at Park Pharmacy. Respondent's colleague, Mark Gascua, a compounding pharmacist at Park Pharmacy also testified about Respondent's exemplary ethical and professional behavior. Respondent has consistently received positive performance evaluations while employed at Park Pharmacy.

11. Joseph Bitterman, an experienced pharmacist and executive with Imprimis, observed Respondent on multiple occasions over several months and determined that she was a key employee and a hard worker. Imprimis purchased Park Pharmacy in January of 2015 and has applied to the Board of Pharmacy for approval of a transfer of ownership of Park Pharmacy to Imprimis, a New Jersey based company. Mr. Bitterman interviewed Respondent and expects to keep her as an employee.

12. Respondent expressed remorse for her actions. Respondent asserted that she was hesitant to stop filling prescriptions for DeLaCirna and his friends because she was concerned about her safety. Respondent also asserted that once she became involved with DeLaCirna she did not know how to extricate herself from the situation. Since her conviction, Respondent has gotten married, found a new job and taken some continuing education courses related to her pharmacist's license. She has also completed all but six hours of her court ordered community service with the Second Harvest Food Bank. Respondent expects to continue with Second Harvest Food Bank as a volunteer after she completes her mandatory community service because she has enjoyed her work there each weekend.

13. Complainant submitted a certification of costs of prosecution in the amount of \$6,990. The costs of prosecution include charges for hours expended by four different attorneys and three paralegals from two different branch offices of the Attorney General's Office and involve substantial duplication of effort. The attorney time is charged at \$170 per hour and the paralegal time at \$120 per hour. The Complainant also submitted a certification of investigative costs from the Board's investigator detailing \$1,555 of investigative costs consisting of 15.25 hours investigative time. While the costs of investigation are reasonable, the legal services charges are excessive and include charges for duplication of effort. The reasonable total costs of investigation and prosecution of this matter within the meaning of Business and Professions Code section 125.3 are \$6,000.

LEGAL CONCLUSIONS

1. The standard of proof which must be met to establish the charging allegations herein is "clear and convincing" evidence. (*Ettinger v. Board of Medical Quality Assurance*

(1982) 135 Cal.App.3d 853.) This means the burden rests with Complainant to offer proof that is clear, explicit and unequivocal--so clear as to leave no substantial doubt and sufficiently strong as to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

2. Business and Professions Code section 125.3 provides that the Board may request that the administrative law judge direct a licensee found to have committed a violation of the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement.

3. Business and Professions Code section 490 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.

4. Business and Professions Code section 4059 provides, in pertinent part, that a pharmacist may not furnish any dangerous drug without a prescription from a physician, dentist, optometrist, veterinarian, or naturopathic doctor.

5. Business and Professions Code section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

6. Business and Professions Code section 4301 provides, in pertinent part, that the Board shall take action against any holder of a license that is guilty of unprofessional conduct.

7. Business and Professions Code section 4301, subdivision (f), provides, in pertinent part, that the grounds of unprofessional conduct include the commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course or relations as a licensee or otherwise, and whether the act is a felony or a misdemeanor.

8. Business and Professions Code section 4301, subdivision (g), provides, in pertinent part, that the grounds of unprofessional conduct include the knowing making or signing of any certificated or other document that falsely represents the existence or nonexistence of a state of facts.

9. Business and Professions Code section 4301, subdivision (j), provides in pertinent part, that the grounds of unprofessional conduct include the violation of any of the statutes of this state, or any other state, or the United States regulating controlled substance and dangerous drugs.

10. Business and Professions Code section 4301, subdivision (l) provides in pertinent part, that the grounds of unprofessional conduct include the conviction of a crime substantially related to the qualifications, functions, and duties of a licensee.

11. Business and Professions Code section 4301, subdivision (o), provides, in pertinent part, that 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 the federal or state Pharmacy law constitutes unprofessional conduct.

12. Health and Safety Code section 11157 provides that no person shall issue a prescription that is false or fictitious in any respect.

13. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself.

14. Health and Safety Code section 11171 provides that no person shall prescribe, administer, or furnish a controlled substance except as provided by the Health and Safety Code.

15. Health and Safety Code section 11173, subdivision (a), provides that no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances by fraud, deceit, misrepresentation, or subterfuge or by concealment of a material fact.

16. Health and Safety Code section 11175 provides that no person shall obtain or possess a prescription that does not comply with this division, nor shall any person obtain a controlled substance by means of a prescription which does not comply with the law or possess a controlled substance obtained by such prescription.

17. Health and Safety Code section 11350 provides that possession of a controlled substance or a narcotic substance without a prescription is a crime.

18. California Code of Regulations, title 16, section 1770, provides that a crime or act shall be considered substantially related to the qualifications, functions or duties of a Board licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant consistent with the public health, safety, or welfare.

19. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code sections 490 and 4301, subdivision (f), in conjunction with California Code of Regulations, title 16, section 1770, for her conviction of a crime substantially related to the qualifications, functions and duties of a licensed pharmacist by reason of factual findings 3-6.

20. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code section 4301 for unprofessional conduct by reason of factual findings 3-6.

21. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code section 4301, subdivision (f), on the grounds of unprofessional conduct in that Respondent committed acts involving dishonesty, fraud, and deceit by reason of factual findings 3-6.

22. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code section 4301, subdivision (g), on the grounds of unprofessional conduct in that Respondent created and/or signed documents that falsely represented the existence of a state of facts by reason of factual findings 3-6.

23. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code sections 4301, subdivisions (j) and (o), and 4059 in conjunction with Health and Safety Code section 11170, in that Respondent furnished controlled substances to six individuals without valid prescriptions for the controlled substances by reason of factual findings 3-6.

24. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code sections 4301, subdivisions (j) and (o), and 4060 in conjunction with Health and Safety Code sections 11350 and 11377, in that Respondent assisted in and abetted the possession of a controlled substance without a prescription by reason of factual findings 3-6.

25. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code sections 4301, subdivisions (j) and (o), and 4324 in conjunction with Health and Safety Code sections 11157 and 11368 in that Respondent falsely made, altered, forged, uttered published, or passed a false, forged, fictitious or altered prescription for a narcotic drug.

26. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code sections 4301, subdivisions (j) and (o), in conjunction with Health and Safety Code sections 11150 and 11171 and 11175 in that Respondent furnished controlled substances under conditions other than those authorized by the Uniform Controlled Substances Act by reason of factual findings 3-6.

27. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code section 4301, subdivisions (j) and (o), in conjunction with Health and Safety Code section 11173, subdivision (a), in that Respondent obtained, conspired to obtain and assisted in or abetted the obtaining of a controlled substance, by fraud and deceit or by concealment of a material fact by reason of factual findings 3-6.

28. The Board has the responsibility to protect the public. As set forth in California Code of Regulations, title 16, section 1760, the Board has promulgated guidelines which set forth factors to be considered in determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case. These factors include the following:

- (1) Actual or potential harm to the public;
- (2) Actual or potential harm to any consumer;
- (3) Prior disciplinary record, including level of compliance with disciplinary order(s);

- (4) Prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s);
- (5) Number and/or variety of current violations;
- (6) Nature and severity of the act(s), offense(s) or crime(s) under consideration;
- (7) Aggravating evidence;
- (8) Mitigating evidence;
- (9) Rehabilitation evidence;
- (10) Compliance with terms of any criminal sentence, parole, or probation;
- (11) Overall criminal record;
- (12) If applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code;
- (13) Time passed since the act(s) or offense(s);
- (14) Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct; and
- (15) Financial benefit to the respondent from the conduct.

29. Due consideration has been given to the above enumerated factors as follows: Respondent committed actual harm to the public by providing controlled substances and dangerous drugs without prescriptions. Respondent has no prior disciplinary history, warnings or admonishments. The violations are a series of serious lapses in judgment, were committed in the practice of pharmacy and are directly related to the functions, qualifications and duties of a pharmacist. In mitigation, Respondent's provided positive evaluations from her employer and her employer and colleagues find her to be ethical and responsible in her work as a pharmacist. Respondent also provided an evaluation from Dr. Banks in which he opines that Respondent does not have any physical impairment that would prevent her from safely practicing as a pharmacist. Respondent has expressed remorse. Respondent is in compliance with her probation, has completed most of her court-ordered community service and has not had any new convictions. Respondent's criminal history consists solely of the conviction at issue in this case. Respondent's conviction is only one year old. The acts which formed a basis for the conviction occurred less than three years ago. Respondent's conduct was intentional, but there was no evidence that she expected or received financial benefit from the conduct.

30. In its guidelines, the Board has established four categories of misconduct for which license discipline may be imposed. Each category has a range of recommended discipline.

A category I violation is for a relatively minor offense with a minimum penalty of one year probation. A category IV violation is considered the most serious offense, which should result in revocation of a license. Respondent's conviction is considered a category III offense because it involves a criminal conviction related to dangerous drugs and controlled substances, knowing and willful violations of laws and regulations related to dispensing dangerous drugs or controlled substances in connection with her practice, and a violation of her corresponding responsibility. The range of recommended discipline for a Category III violation is a minimum of revocation stayed with a 90 day actual suspension, and three years' probation and a maximum of outright revocation.

31. Administrative proceedings to revoke, suspend or impose discipline on a professional license are non-criminal and non-penal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.) In consideration of all of the facts and circumstances of this case, the interests of public protection require that Respondent's pharmacist license be revoked.

a. Respondent committed serious violations of the pharmacy law and regulations multiple times, with multiple individuals over an extended period of time with intent and knowledge that her conduct was in violation of the law. Respondent ignored many factors that were red flags that warranted her attention and triggered her responsibility to take alternate action, including the misspellings of the drugs' names, the volume of dosages and refills, the same combination of potentially duplicative drugs for multiple patients, the same prescribing doctor, the cash payments. (*In re Pacifica Pharmacy Corp.; Thang Tran*; Board Prec. Dec. No. 2013-01.) The underlying actions which led to the conviction demonstrate extremely poor judgment and her actions put the public at risk by making high volumes of drugs available to individuals without a medical need, who could have been harmed by taking them. Respondent's assertion that she was under duress when she filled the prescriptions was unconvincing.

b. Respondent's conviction was only a year ago and she remains on probation until 2017. Sufficient time has not passed to evaluate Respondent's rehabilitation. Good behavior while on court-ordered probation or parole is not generally considered to be a reliable measure of rehabilitation because someone involved with the criminal justice system has a strong motive to remain on good behavior. It is well settled in law that little weight is given to compliant or good conduct while on court ordered probation or parole, and here Respondent has yet to complete any substantial portion of her probation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) In addition, while the Board considered respondent's evidence of rehabilitation, public protection must take priority over rehabilitation and, where evidence of rehabilitation and public protection are in conflict, public protection shall take precedence. (Bus. & Prof. Code, § 4313.)

32. Complainant has established that the Board has incurred reasonable costs of \$6,000 in this matter under the provisions of Business and Professions Code section 123.5, by reason of factual finding 13. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29

Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost recovery provision similar to Business and Professions Code section 125.3. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Thus, the Board must not assess the full costs where it would unfairly penalize a Respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. The Board must consider a respondent's subjective good faith belief in the merits of his or her position and whether that respondent has raised a colorable challenge. The Board must also consider a respondent's ability to pay. In light of these factors and the severity of the discipline imposed, it would be unduly punitive to require Respondent to pay the entire balance of the Board's costs at this time. Accordingly, Respondent will be required to pay \$6,000 in costs as a condition of reinstatement.

ORDER

Pharmacist License No. RPH 64465 issued to respondent Vy Khanh Thi Tarr, also known as Vy Khanh Thi Nguyen, is revoked. Respondent shall relinquish her pharmacist license to the Board within ten (10) days of the effective date of this decision. Respondent may not petition the Board for reinstatement of her revoked pharmacist license for two (2) years from the effective date of this decision.

As a condition precedent to reinstatement of her revoked pharmacist license Respondent shall reimburse the Board for its costs of investigation and prosecution in the amount of \$6,000. Said amount shall be paid in full prior to the reinstatement of her pharmacist license, unless otherwise ordered by the Board.

This decision shall become effective on August 24, 2015.

It is so ORDERED on July 23, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amarylis (Amy) Gutierrez
Board President

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

In the Matter of the Accusation Against:

**VYKHANH THI TARR
AKA VYKHANH THI NGUYEN**

Pharmacist License No. RPH 64465

Respondent.

Case No. 4911

OAH No. 2014060602

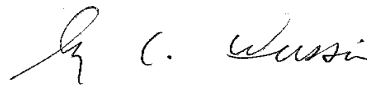
TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

ORDER FIXING DATE FOR SUBMISSION OF ARGUMENT

The transcript of the hearing in the above-entitled matter having now become available, the parties are hereby notified of the opportunity to submit written arguments in accordance with the Order Granting Petition for Reconsideration dated April 29, 2015. In addition to any arguments the parties may wish to submit, the board is interested in argument directed at the following issue: If cause for discipline exists, what penalty, if any, should be applied in this case.

Pursuant to said Order written argument shall be filed with the Board of Pharmacy, 1625 N. Market Blvd, Suite N-219, Sacramento, California, on or before May 26, 2015. **No new evidence may be submitted.**

IT IS SO ORDERD this 12th day of May 2015.



STAN C. WEISSER
President, Board of Pharmacy
Department of Consumer Affairs

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

In the Matter of the Second Amended
Accusation Against:

VYKHANH THI TARR
AKA VYKHANH THI NGUYEN

Pharmacist License No. RPH 64465,

Respondent.

Case No. 4911

OAH No. 2014060602

**ORDER GRANTING
PETITION FOR RECONSIDERATION
AND STAY OF EXECUTION OF THE
EFFECTIVE DATE OF THE DECISION
AND ORDER**

DECISION AND ORDER

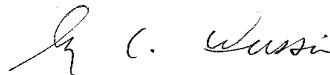
Respondent having requested reconsideration of the decision in the above-entitled matter, and good cause appearing, IT IS HEREBY ORDERED:

- (1) That reconsideration be, and is, hereby granted, said reconsideration to be solely on whether to reject the decision and order;
- (2) That the parties will be notified of the date for submission of any oral or written arguments they may wish to submit when the transcript of the above-entitled matter becomes available; and;
- (3) The Decision of the Board in this matter issued on April 1, 2015, is hereby stayed until the Board renders its decision on reconsideration.

The board itself will decide the case upon the record, including the exhibits and oral and written arguments of the parties, without taking additional evidence.

IT IS SO ORDERED this 23rd day of April 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

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

In the Matter of the Second Amended
Accusation Against:

VYKHANH THI TARR AKA VYKHANH
THI NGUYEN

Pharmacist License No. RPH 64465,

Respondent.

Case No. 4911

OAH No. 2014060602

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 May 1, 2015.

It is so ORDERED on April 1, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER
Board President

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

In the Matter of the Second Amended
Accusation Against:

**VYKHANH THI TARR AKA VYKHANH
THI NGUYEN,**

Pharmacist License No. RPH 64465,

Respondent.

Case No. 4911

OAH No. 2014060602

PROPOSED DECISION

Glynda B. Gomez, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter on February 10 and 11, 2015, in Los Angeles, California.

Deputy Attorney General Katherine Messana represented Complainant Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California. Benjamin Fenton, Attorney at law, represented Respondent Vy Khanh Thi Tarr also known as Vyknahn Thi Nguyen (Respondent) who was also present throughout the proceedings.

The matter was submitted on February 11, 2015.

FACTUAL FINDINGS

1. Complainant filed the Second Amended Accusation in her official capacity. Respondent timely filed a Notice of Defense requesting a hearing.

2. On August 23, 2010, the Board issued Pharmacist License No. 64465 to Respondent. The license is in full force and effect and will expire on March 31, 2016, unless renewed.

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3. On February 6, 2014, in the Superior Court of California, County of Orange, in Case No. 13WF1064 entitled the *People of the State of California v. Vy Khanh Thi Nguyen*, Respondent was convicted on her plea of guilty of six counts of violating Health and Safety Code section 11368, (forging or issuing a false prescription or possessing drugs secured by a forged prescription). Respondent was sentenced to 30 days in jail stayed, pending completion of 240 hours of community service and three years of probation with terms and conditions. At the time of the hearing, Respondent had completed 236 of the required 240 hours by volunteering at a community food bank. Respondent is scheduled to remain on probation until February of 2017.

4. As part of the plea agreement, Respondent wrote and signed a statement wherein she admitted that on "six separate occasions on or between 7-19-12 and 9-19-12 in the county of Orange, I willfully and unlawfully uttered a forged prescription for a narcotic drug in order for a person to unlawfully obtain that narcotic drug." (Exhibit 5)

5. The facts and circumstances of the conviction are as follows:

a. While employed as a pharmacist at the Ralph's Pharmacy in Costa Mesa, Respondent met Alan DeLaCirna (DeLaCirna), the brother of a friend of her boyfriend (now husband), at a party or social gathering at the friend's home around September 14, 2011. In conversation, Respondent revealed to DeLaCirna that she was a pharmacist. DeLaCirna told her that he had recently been in a serious car accident and was experiencing a lot of pain. DeLaCirna asked if Respondent could fill his prescription for him. Respondent agreed to fill the prescription. DeLaCirna gave Respondent the prescription which she placed in her pocket. Before leaving the gathering, Respondent exchanged cellular telephone contact information with DeLaCirna.

b. When Respondent returned to work at Ralph's Pharmacy the next day, she reviewed the prescription. She noted that the prescription was for three medications: Oxycodone, Norco and Xanax.

c. Oxycodone is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(M) and a dangerous drug as designated by Business and Professions Code section 4022.

d. Norco, Vicodin, Vicodin ES, Lortab, and Lorcet are brand names for compounds of dosages of acetaminophen and hydrocodone, a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4) and a dangerous drug as designated by Business and Professions Code section 4022.

e. Xanax is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(1) and a dangerous drug as designated by Business and Professions Code section 4022.

f. Respondent noted on the prescription that she called the prescribing doctor's office and spoke to someone named "Michael" who confirmed the prescription was legitimate. However, the prescriptions were not legitimate and were written on a stolen prescription pad. Respondent filled the prescription and then notified DeLaCirna by text message sent from her cellular telephone that the prescription was ready.

h. About 30 days later, DeLaCirna sent Respondent a text message asking her to refill the prescriptions. Although Respondent felt uncomfortable doing so, she refilled all three medications as DeLaCirna requested and did not contact the prescribing doctor's office again to verify the legitimacy of the prescriptions.

i. Soon after filling the second set of prescriptions, DeLaCirna began texting Respondent to notify her that he was sending other individuals to the pharmacy with prescriptions to be filled. DeLaCirna sent at least six other individuals, each with multiple prescriptions, from the same prescribing doctor, and Respondent filled all of the prescriptions as requested by DeLaCirna without verifying them with the prescribing doctor. The prescriptions included Schedule II, III and IV controlled substances and dangerous drugs including Norco, Xanax, and Oxycodone.

j. DeLaCirna and the other individuals that he sent to the pharmacy all paid with cash. Each of them provided Respondent with a prescription script which contained multiple medications written by the same prescribing doctor. Each prescription was written with multiple refills. All of these factors should have caused Respondent some concern about filling the prescriptions.

k. There was no evidence that Respondent received anything in return for filling the prescriptions, other than the customers' cash payments to the pharmacy.

6. Pharmacists perform their duties with a minimum amount of supervision, have access to controlled substances, provide patient information, customer service, drug compounding and assemble prescriptions. Pharmacists have substantial access to pharmacy inventory and good judgment is essential to the functions, duties and qualifications of a pharmacist. Respondent exercised extremely poor professional judgment on multiple occasions by filling the prescriptions for DeLaCirna and his associates and by not verifying each prescription with the prescriber.

7. At Respondent's request, Brian P. Jacks, M.D., F.A.A.C.P., a psychiatrist, conducted a psychiatric evaluation of Respondent. Dr. Jacks interviewed Respondent for two hours and administered the Minnesota Multiphasic Personality Inventory (MMPI-2). The evaluation consisted of reviewing some of the court documents, portions of a police report, interviewing Respondent and reviewing the results of the computerized analysis of the MMPI-2. Based upon his evaluation, Dr. Jacks opined that Respondent had mild anxiety and depression including sleep disturbance as a result of her criminal conviction and the attendant pending pharmacy board disciplinary action. Dr. Jacks also noted that Respondent received an elevated score in the paranoia scale of the MMPI-2. Dr. Jacks opined that Respondent was remorseful for her actions, had been naïve in her dealings with DeLaCirna, and had developed skepticism of other people as a result of her criminal case. Dr. Jacks found no indication of psychiatric problems or addiction. Dr. Jacks opined that Respondent did not have any impairment that would prohibit her from safely practicing as a pharmacist. Dr. Jacks recommended that Respondent receive additional training in pharmacy law and professional responsibility. He further opined that Respondent was unlikely to commit similar violations in the future having learned from her mistakes. Dr. Jack's testimony on the last point was not persuasive because his evaluation was based only upon the circumstances as described by Respondent and his testing was based solely upon a self-reporting measure. Dr. Jack's opinion with respect to the likelihood of recidivism and recommendations were largely without foundation

8. Respondent has worked for Park Pharmacy, a compounding pharmacy in Orange County for two years. Tina Sulic Saadeh, the Pharmacist in Charge, testified on Respondent's behalf. Park Pharmacy is a compounding pharmacy and rarely handles controlled substances. Any controlled substances on the premises are in a locked cabinet in the front of the pharmacy in full view of all pharmacists and technicians. Respondent is one of five pharmacists at Park Pharmacy. Respondent handles customers, checks prescriptions and verifies doctors' orders.

9. Ms. Saadeh found Respondent to be very responsible, diligent and a good communicator. She hired Respondent knowing that Respondent had been discharged from Ralph's for inappropriately filling a prescription. Respondent suffered the criminal conviction set forth in factual finding 3 above during her tenure at Park Pharmacy. Respondent disclosed the conviction and the pending Pharmacy Board accusation to Ms. Saadeh. Ms. Saadeh did some research on her own to review the allegations against Respondent and the substance of the criminal charges out of concern for her own pharmacist's license and the pharmacy Permit.¹ Ms.

¹ Park Pharmacy's Pharmacy Permit with Co-Owners Dennis Elias Saadeh and Tina Marie Sulic-Saadeh was the subject of a Pharmacy Board disciplinary order effective August 13, 2008 based upon shortages of Hydrocodone,

Saadeh was sympathetic to Respondent's predicament, having experienced Pharmacy Board discipline as a co-owner of Park Pharmacy. Ms. Saadeh found Respondent to be a valuable employee.

10. Pharmacists Dennis Saadeh and Larry Woodhouse, both of Park Pharmacy, provided letters of reference for Respondent attesting to her ethical and professional conduct while employed at Park Pharmacy. Respondent's colleague, Mark Gascua, a compounding pharmacist at Park Pharmacy also testified about Respondent's exemplary ethical and professional behavior. Respondent has consistently received positive performance evaluations while employed at Park Pharmacy.

11. Joseph Bitterman, an experienced pharmacist and executive with Imprimis, observed Respondent on multiple occasions over several months and determined that she was a key employee and a hard worker. Imprimis purchased Park Pharmacy in January of 2015 and has applied to the Board of Pharmacy for approval of a transfer of ownership of Park Pharmacy to Imprimis, a New Jersey based company. Mr. Bitterman interviewed Respondent and expects to keep her as an employee.

12. Respondent expressed remorse for her actions. Respondent asserted that she was hesitant to stop filling prescriptions for DeLaCirna and his friends because she was concerned about her safety. Respondent also asserted that once she became involved with DeLaCirna she did not know how to extricate herself from the situation. Since her conviction, Respondent has gotten married, found a new job and taken some continuing education courses related to her pharmacist's license. She has also completed all but six hours of her court ordered community service with the Second Harvest Food Bank. Respondent expects to continue with Second Harvest Food Bank as a volunteer after she completes her mandatory community service because she has enjoyed her work there each weekend.

13. Complainant submitted a certification of costs of prosecution in the amount of \$6,990. The costs of prosecution include charges for hours expended by four different attorneys and three paralegals from two different branch offices of the

Alprazolam and Methylphenidate at Park Pharmacy and the conviction of Dennis Saadeh for driving while under the influence of drugs and the unlawful possession of Hydrocodone, Methylphenidate, and Alprazolam. The Board of Pharmacy revoked the Pharmacy Permit and the Pharmacist's license of Dennis Saadeh. However, the revocations were stayed and both licenses were placed on probation for five years with terms and conditions. The probations were completed in 2013 without further incident.

Attorney General's Office and involve substantial duplication of effort. The attorney time is charged at \$170 per hour and the paralegal time at \$120 per hour. The Complainant also submitted a certification of investigative costs from the Board's investigator detailing \$1,555 of investigative costs consisting of 15.25 hours investigative time. While the costs of investigation are reasonable, the legal services charges are excessive and include charges for duplication of effort. The reasonable total costs of investigation and prosecution of this matter within the meaning of Business and Professions Code Section 125.3 are \$6,000.

LEGAL CONCLUSIONS

1. The standard of proof which must be met to establish the charging allegations herein is "clear and convincing" evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This means the burden rests with Complainant to offer proof that is clear, explicit and unequivocal--so clear as to leave no substantial doubt and sufficiently strong as to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

2. Business and Professions Code section 125.3 provides that the Board may request that the administrative law judge direct a licensee found to have committed a violation of the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement.

3. Business and Professions Code section 490 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.

4. Business and Professions Code section 4059 provides, in pertinent part, that a pharmacist may not furnish any dangerous drug without a prescription from a physician, dentist, optometrist, veterinarian, or naturopathic doctor.

5. Business and Professions Code section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

6. Business and Professions Code section 4301 provides, in pertinent part, that the Board shall take action against any holder of a license that is guilty of unprofessional conduct.

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7. Business and Professions Code section 4301, subdivision (f), provides, in pertinent part, that the grounds of unprofessional conduct include 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 a misdemeanor.

8. Business and Professions Code section 4301, subdivision (g), provides, in pertinent part, that the grounds of unprofessional conduct include the knowing making or signing of any certificated or other document that falsely represents the existence or nonexistence of a state of facts.

9. Business and Professions Code section 4301, subdivision (j), provides in pertinent part, that the grounds of unprofessional conduct include the violation of any of the statutes of this state, or any other state, or the United States regulating controlled substance and dangerous drugs.

10. Business and Professions Code section 4301, subdivision (l) provides in pertinent part, that the grounds of unprofessional conduct include the conviction of a crime substantially related to the qualifications, functions, and duties of a licensee.

11. Business and Professions Code section 4301, subdivision (o), provides, in pertinent part, that 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 the federal or state Pharmacy law constitutes unprofessional conduct.

12. Health and Safety Code 11157 provides that no person shall issue a prescription that is false or fictitious in any respect.

13. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself.

14. Health and Safety Code section 11171 provides that no person shall prescribe, administer, or furnish a controlled substance except as provided by the Health and Safety Code.

15. Health and Safety Code section 11173, subdivision (a) provides that no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of/or prescription for controlled substances by fraud, deceit, misrepresentation, or subterfuge or by concealment of a material fact.

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16. Health and Safety Code section 11175 provides that no person shall obtain or possess a prescription that does not comply with this division, nor shall any person obtain a controlled substance by means of a prescription which does not comply with the law or possess a controlled substance obtained by such prescription.

17. Health and Safety Code section 11350 provides that possession of a controlled substance or a narcotic substance without a prescription is a crime.

18. California Code of Regulations, title 16, section 1770, provides that a crime or act shall be considered substantially related to the qualifications, functions or duties of a Board licensee or registrant if to a substantial degree it evidences present of potential unfitness of a licensee or registrant consistent with the public health, safety, or welfare.

19. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code section 4301, subdivision (l), and section 490, in conjunction with California Code of Regulations, title 16, section 1770, for her conviction of a crime substantially related to the qualifications, functions and duties of a licensed pharmacist by reason of factual findings 3-6.

20. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code section 4301 for unprofessional conduct by reason of factual findings 3-6.

21. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code section 4301, subdivision (f) on the grounds of unprofessional conduct in that Respondent committed acts involving dishonesty, fraud, and deceit by reason of factual findings 3-6.

22. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code section 4301, subdivision (g) on the grounds of unprofessional conduct in that Respondent created and/or signed documents that falsely represented the existence of a state of facts by reason of factual findings 3-6.

23. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code sections 4301, subdivisions (j) and (o) and 4059 in conjunction with Health and Safety Code section 11170, in that Respondent furnished controlled substances to six individuals without valid prescriptions for the controlled substances by reason of factual findings 3-6.

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24. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code sections 4301, subdivisions (j) and (o) and 4324 in conjunction with Health and Safety Code sections 11350 and 11377 in that Respondent assisted in and abetted the possession of a controlled substance without a prescription by reason of factual findings 3-6.

25. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code sections 4301, subdivisions (j) and (o) and 4324 in conjunction with Health and Safety Code sections 11357 and 11369 in that Respondent falsely uttered a prescription for a narcotic drug.

26. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code sections 4301, subdivisions (j) and (o) and 4324 in conjunction with Health and Safety Code sections 11350 and 11171 and 11175 in that Respondent furnished controlled substances under conditions other than those authorized by the Uniform Controlled Substances Act by reason of factual findings 3-6.

27. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code sections 4301, subdivisions (j) and (o) in conjunction with Health and Safety Code section 11173, subdivision (c) in that Respondent obtained, conspired to obtain and assisted in the obtaining of a controlled substance, by fraud and deceit by reason of factual findings 3-6.

28. The Board has the responsibility to protect the public. As set forth in California Code of Regulations, title 16, section 1760, the Board has promulgated guidelines which set forth factors to be considered in determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case. These guidelines provide as follows:

- (1) Actual or potential harm to the public
- (2) Actual or potential harm to any consumer
- (2) Prior disciplinary record, including level of compliance with disciplinary order(s)
- (3) Prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
- (4) Number and/or variety of current violations

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- (5) Nature and severity of the act(s), offense(s) or crime(s) under consideration
- (6) Aggravating evidence
- (7) Mitigating evidence
- (8) Rehabilitation evidence
- (9) Compliance with terms of any criminal sentence, parole, or
- (10) Overall criminal record
- (11) If applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code.
- (12) Time passed since the act(s) or offense(s)
- (13) Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct
- (14) Financial benefit to the respondent from the conduct

29. Due consideration has been given to the above enumerated factors as follows: Respondent committed actual harm to the public by providing controlled substances and dangerous drugs without prescriptions. Respondent has no prior disciplinary history, warnings or admonishments. The violations are a series of serious lapses in judgment, were committed in the practice of pharmacy and are directly related to the functions, qualifications and duties of a pharmacist. In mitigation, Respondent's provided positive evaluations from her employer and her employer and colleagues find her to be ethical and responsible in her work as a pharmacist. Respondent also provided an evaluation from Dr. Banks in which he opines that Respondent does not have any physical impairment that would prevent her from safely practicing as a pharmacist. Respondent has expressed remorse. Respondent is in compliance with her probation, has completed most of her court-ordered community service and has not had any new convictions. Respondent's criminal history consists solely of the conviction at issue in this case. Respondent's conviction is only one year old. The acts which formed a basis for the conviction occurred less than three years ago. Respondent's conduct was intentional, but there was no evidence that she expected or received financial benefit from the conduct.

30. In its guidelines, the Board has established four categories of misconduct for which license discipline may be imposed. Each category has a range of recommended discipline. A category I violation is for a relatively minor offense with a minimum penalty of one year probation. A category IV violation is considered the most serious offense, which should result in revocation of a license. Respondent's conviction is considered a category III offense because it involves a criminal conviction related to dangerous drugs and controlled substances, knowing and willful violations of laws and regulations related to dispensing dangerous drugs or controlled substances in connection with her practice, and a violation of her corresponding responsibility. The range of recommended discipline for a Category III violation is a minimum of revocation stayed with a 90 day actual suspension, and three years' probation and a maximum of outright revocation.

31. Administrative proceedings to revoke, suspend or impose discipline on a professional license are non-criminal and non-penal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.) In consideration of all of the facts and circumstances of this case, the interests of public protection require that Respondent's Pharmacist license be revoked. Respondent committed serious violations of the pharmacy law and regulations multiple times, with multiple individuals over an extended period of time with intent and knowledge that her conduct was in violation of the law. The underlying actions which led to the conviction demonstrate extremely poor judgment and a lack of maturity. Respondent's conviction was only a year ago and she remains on probation until 2017. Sufficient time has not passed to evaluate Respondent's rehabilitation. Good behavior while on court-ordered probation or parole is not generally considered to be a reliable measure of rehabilitation because someone involved with the criminal justice system has a strong motive to remain on good behavior. It is well settled in law that little weight is given to compliant or good conduct while on court ordered probation or parole, and here Respondent has yet to complete any substantial portion of her probation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

32. Complainant has established that the Board has incurred reasonable costs of \$6,000 in this matter under the provisions of Business and Professions Code section 123.5, by reason of factual finding 13. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost recovery provision similar to Business and Professions Code section 125.3. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Thus, the Board must not assess the full costs where it would unfairly penalize a Respondent who has committed some misconduct, but who has used the


hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. The Board must consider a respondent's subjective good faith belief in the merits of his or her position and whether that respondent has raised a colorable challenge. The Board must also consider a respondent's ability to pay. In light of these factors and the severity of the discipline imposed, it would be unduly punitive to require Respondent to pay the entire balance of the Board's costs at this time. Accordingly, Respondent will be required to pay \$6,000 in costs as a condition of reinstatement.

ORDER

Pharmacist License No. RPH 64465 issued to respondent Vy Khanh Thi Tarr also known as Vy Khanh Thi Nguyen is revoked. Respondent shall relinquish her pharmacist license to the Board within ten (10) days of the effective date of this decision. Respondent may not petition the Board for reinstatement of her revoked pharmacist license for three (3) years from the effective date of this decision.

As a condition precedent to reinstatement of her revoked pharmacist license Respondent shall reimburse the Board for its costs of investigation and prosecution in the amount of \$6,000. Said amount shall be paid in full prior to the reinstatement of her pharmacist license, unless otherwise ordered by the Board.

DATED: March 5, 2015


GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings

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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4911

11 **VYKHANH THI TARR AKA VYKHANH**
12 **THI NGUYEN**

SECOND AMENDED ACCUSATION

13 14160 Red Hill Ave., Apt. 75
14 Tustin, CA 92780

15 Pharmacist License No. RPH 64465

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold ("Complainant") brings this Second Amended Accusation
20 ("Accusation") solely in her official capacity as the Executive Officer of the Board of Pharmacy,
21 Department of Consumer Affairs.

22 2. On or about August 23, 2010, the Board of Pharmacy issued Pharmacist License No.
23 RPH 64465 to Vy Khanh Thi Tarr aka Vy Khanh Thi Nguyen ("Respondent"). The License was in
24 full force and effect at all times relevant to the charges brought herein and will expire on March
25 31, 2016, unless renewed.

26 **JURISDICTION AND STATUTORY PROVISIONS**

27 3. This Accusation is brought before the Board of Pharmacy ("Board"), Department of
28 Consumer Affairs, under the authority of the following laws. All section references are to the

1 Business and Professions Code ("Code") unless otherwise indicated.

2 4. Section 4011 of the Code provides that the Board shall administer and enforce both
3 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
4 Act [Health & Safety Code, § 11000 et seq.].

5 5. Section 4300, subdivision (a) of the Code provides that every license issued by the
6 Board may be suspended or revoked.

7 6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or
8 suspension of a Board-issued license, the placement of a license on a retired status, or the
9 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
10 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
11 licensee or to render a decision suspending or revoking the license.

12 7. Section 490 of the Code provides, in pertinent part:

13 (a) In addition to any other action that a board is permitted to take against
14 a licensee, a board may suspend or revoke a license on the ground that the licensee
15 has been convicted of a crime, if the crime is substantially related to the
16 qualifications, functions, or duties of the business or profession for which the license
17 was issued.

18 (b) Notwithstanding any other provision of law, a board may exercise any
19 authority to discipline a licensee for conviction of a crime that is independent of the
20 authority granted under subdivision (a) only if the crime is substantially related to the
21 qualifications, functions, or duties of the business or profession for which the
22 licensee's license was issued.

23 (c) A conviction within the meaning of this section means a plea or
24 verdict of guilty or a conviction following a plea of nolo contendere. An action that a
25 board is permitted to take following the establishment of a conviction may be taken
26 when the time for appeal has elapsed, or the judgment of conviction has been
27 affirmed on appeal, or when an order granting probation is made suspending the
28 imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the
29 Penal Code."

30 8. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
31 against any holder of a license who is guilty of unprofessional conduct, defined to include, but not
32 be limited to, any of the following:

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

36 (g) Knowingly making or signing any certificate or other document that

1 falsely represents the existence or nonexistence of a state of facts.

2 ...

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

5 ...

6 (l) The conviction of a crime substantially related to the qualifications,
7 functions, and duties of a licensee under this chapter.

8 ...

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

14 9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
15 drug or dangerous device except upon the prescription of an authorized prescriber.

16 10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
17 controlled substance, except that furnished upon a valid prescription/drug order.

18 11. Section 4324 of the Code, in pertinent part, makes it unlawful for any person to sign
19 the name of another, or to falsely make, alter, forge, utter, publish, pass, or attempt to pass, as
20 genuine, any prescription for any drug, or to possess any drugs secured by any such forgery.

21 12. Health and Safety Code section 11150 provides, in pertinent part, that no person other
22 than an authorized prescriber shall write or issue a prescription.

23 13. Health and Safety Code section 11157 provides that no person shall issue a
24 prescription that is false or fictitious in any respect.

25 14. Health and Safety Code section 11171 provides that no person shall prescribe,
26 administer, or furnish a controlled substance except under the conditions and in the manner
27 provided by Division 10 (commencing with section 11000) of the Health and Safety Code.

28 15. Health and Safety Code section 11173, subdivision (a), provides that no person shall
obtain or attempt to obtain controlled substances, or procure or attempt to procure the
administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
or subterfuge; or (2) by the concealment of a material fact.

1 16. Health and Safety Code section 11175 makes it unlawful for any person to obtain or
2 possess a prescription that does not comply with the Uniform Controlled Substances Act [Health
3 & Safety Code, § 11000 et seq.], to obtain a controlled substance by means of such non-compliant
4 prescription, or to possess a controlled substance obtained by such a prescription.

5 17. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
6 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
7 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

8 18. Health and Safety Code section 11368, in pertinent part, makes it unlawful to forge or
9 alter a prescription, issue or utter an altered prescription, issue or utter a prescription with forged
10 or fictitious signature for a narcotic drug, obtain a narcotic drug by a forged, fictitious, or altered
11 prescription, or possess a narcotic drug secured by a forged, fictitious, or altered prescription.

12 19. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess
13 certain Schedule I-III controlled substances, or any controlled substance in Schedules III-V which
14 is not a narcotic drug, unless upon written prescription of an authorized prescriber.

15 **REGULATORY PROVISIONS**

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

17 “For the purpose of denial, suspension, or revocation of a personal or
18 facility license pursuant to Division 1.5 (commencing with Section 475) of the
19 Business and Professions Code, a crime or act shall be considered substantially
20 related to the 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 her license or registration in a manner
consistent with the public health, safety, or welfare.”

21 **COST RECOVERY**

22 21. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
23 administrative law judge to direct a licentiate found to have committed a violation of the licensing
24 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Conviction of Substantially Related Crime(s))**

27 22. Respondent is subject to discipline under section 4301, subdivision (l) and section
28 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in

1 that Respondent was convicted of a crime substantially related to the qualifications, functions and
2 duties of a licensed pharmacist, as follows:

3 23. On or about February 6, 2014, Respondent pled guilty to and was convicted of six (6)
4 misdemeanor counts of violating Health and Safety Code section 11368 (Forging/Issuing
5 Prescription, or Obtaining or Possessing Drugs Secured by Forged Prescription) in the criminal
6 case entitled *The People of the State of California v. Vy Khanh Thi Nguyen* (Sup. Ct. of California,
7 County of Orange, 2013, Case No. 13WF1064). The court ordered Respondent to serve thirty
8 (30) days in Orange County Jail (stayed pending completion of 240 hours of community service)
9 and placed Respondent on formal probation for three (3) years, with terms and conditions. As
10 part of the plea, Respondent admitted that "[o]n six separate occasions on or between 7-19-12 and
11 9-19-12 in the county of Orange, I willfully and unlawfully uttered a forged prescription for a
12 narcotic drug in order for a person to unlawfully obtain that narcotic drug." The circumstances
13 underlying the criminal conviction are, as follows:

14 24. Respondent was employed as a pharmacist at Ralph's Pharmacy in Costa Mesa,
15 California from on or about September 15, 2011, to on or about October 19, 2012. By virtue of
16 her employment she had access to controlled substances and dangerous drugs, and to the means
17 for entering prescriptions and refills into the data system, and dispensing same. On or about
18 October 17, 2012, Costa Mesa Police Department officers responded to a call from Ralph's
19 Pharmacy that the loss prevention manager had detained Respondent for filling out fraudulent
20 prescriptions. Respondent admitted to officers that she met (A.D.) at a party in July 2012, and
21 A.D. asked Respondent to fill out a prescription for her. Respondent agreed and took the
22 prescription. The prescription was for Oxycodone¹, Norco² and Xanax³. Later in the week,

23
24 ¹ Oxycodone, a Schedule II controlled substance as designated by Health and Safety Code section
11055(b)(1)(M) and a dangerous drug as designated by Business and Professions Code section 4022.

25 ² Norco, Vicodin, Vicodin ES, Lortab, and Lorcet are among the brand names for compounds of varying
dosages of acetaminophen (aka APAP) and hydrocodone, a Schedule III controlled substance as designated by Health
26 and Safety Code section 11056(e)(4) and dangerous drug as designated by Business and Professions Code section
4022. The varying compounds are also known generically as Hydrocodone with APAP.

27 ³ Xanax is a brand name for alprazolam, a Schedule IV controlled substance as designated by Health and
Safety Code section 11057(d)(1) and a dangerous drug as designated by Business and Professions Code section 4022.
28

1 Respondent called the phone number on the prescription and a person by the name of Michael
2 answered. Even though Respondent was suspicious, she filled the prescription. From July, 2012,
3 to October, 2012, A.D. texted Respondent several times and asked her to fill out prescriptions for
4 other people. Respondent complied and filled out prescriptions for other people. Respondent
5 knew the contact by the person's body language or by the person mentioning A.D.'s name.
6 Respondent admitted to filling out approximately twenty-five (25) prescriptions for about fifteen
7 (15) different people. The prescriptions were mostly for Oxycodone, Norco and Xanax.
8 Respondent signed and dated certain prescriptions. Respondent admitted that she knew the
9 prescriptions were fraudulent. During the booking process, the officer found two medicine pill
10 bottles (with no labels), containing thirty-nine (39) pills of various shapes, sizes and color.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct)**

13 25. Respondent is subject to discipline under section 4301 of the Code in that Respondent
14 committed conduct that amounts to to unprofessional conduct. The conduct is described in more
15 particularity in paragraph 24 above, inclusive and hereby incorporated by reference.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)**

18 26. Respondent is subject to discipline under section 4301, subdivision (f) of the Code on
19 the grounds of unprofessional conduct in that Respondent committed acts involving moral
20 turpitude, dishonesty, fraud, deceit, or corruption. The conduct and subsequent criminal
21 convictions are described in more particularity in paragraphs 23 and 24 above, inclusive and
22 hereby incorporated by reference.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 **(Creation/Signature of False Documents)**

25 27. Respondent is subject to discipline under section 4301, subdivision (g) of the Code on
26 the grounds of unprofessional conduct in that Respondent created and/or signed documents that
27 falsely represented the existence or nonexistence of a state of facts. The conduct and subsequent
28 criminal conviction are described in more particularity in paragraphs 23 and 24 above, inclusive

1 and hereby incorporated by reference.

2 **FIFTH CAUSE FOR DISCIPLINE**

3 **(Furnishing of Controlled Substance)**

4 28. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
5 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, furnished to
6 herself or another without a valid prescription, and/or conspired to furnish, and/or assisted or
7 abetted furnishing of, a controlled substance. The conduct and subsequent criminal conviction
8 are described in more particularity in paragraphs 23 and 24 above, inclusive and hereby
9 incorporated by reference.

10 **SIXTH CAUSE FOR DISCIPLINE**

11 **(Possession of Controlled Substance)**

12 29. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
13 4060 of the Code, and/or Health and Safety Code section(s) 11350 and/or 11377, in that
14 Respondent, conspired to possess, and/or assisted in or abetted possession of, a controlled
15 substance, without a prescription. The conduct and subsequent criminal conviction are described
16 in more particularity in paragraphs 23 and 24 above, inclusive and hereby incorporated by
17 reference.

18 **SEVENTH CAUSE FOR DISCIPLINE**

19 **(Making, Uttering and/or Using False or Forged Prescriptions)**

20 30. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
21 4324 of the Code, and/or Health and Safety Code section(s) 11157 and/or 11368, in that
22 Respondent, falsely made, altered, forged, uttered, published, passed, or attempted to pass, a
23 false, forged, fictitious or altered prescription for a (narcotic) drug, had in his possession a
24 (narcotic) drug secured by a false, forged, fictitious or altered prescription, or conspired and/or
25 assisted in or abetted any of these acts. The conduct and subsequent criminal conviction are
26 described in more particularity in paragraphs 23 and 24 above, inclusive and hereby incorporated
27 by reference.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

2 **(Issuance, Furnishing Pursuant To, and/or Use of Invalid Prescription)**

3 31. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
4 and/or Health and Safety Code section(s) 11150, 11171, and/or 11175, in that Respondent, issued
5 prescriptions without authority to do so, prescribed, administered, or furnished controlled
6 substances under conditions other than those authorized by the Uniform Controlled Substances
7 Act, obtained or possessed an invalid prescription, obtained or possessed a controlled substance
8 by means of such invalid prescription, or conspired and/or assisted in or abetted any of these acts.
9 The conduct and subsequent criminal conviction are described in more particularity in
10 paragraphs 23 and 24 above, inclusive and hereby incorporated by reference.

11 **NINTH CAUSE FOR DISCIPLINE**

12 **(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)**

13 32. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
14 and/or Health and Safety Code section 11173(a), in that Respondent, obtained, conspired to
15 obtain, and/or assisted in or abetted the obtaining of a controlled substance, by fraud, deceit,
16 subterfuge, or concealment of material fact. The conduct and subsequent criminal conviction are
17 described in more particularity in paragraphs 23 and 24 above, inclusive and hereby incorporated
18 by reference.

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1. Revoking or suspending Pharmacist License Number RPH 64465, issued to Vykanh Thi Tarr aka Vykanh Thi Nguyen (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;
3. Taking such other and further action as is deemed necessary and proper.

10/3/14

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6
7 **BEFORE THE**
BOARD OF PHARMACY
8 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

9
10 In the Matter of the Accusation Against:

Case No. 4911

11 **VYKHANH THI NGUYEN**
14160 Red Hill Ave., Apt. 75
Tustin, CA 92780

FIRST AMENDED
A C C U S A T I O N

12 **Pharmacist License No. RPH 64465**

13
14 Respondent.

15 Complainant alleges:

16
17 PARTIES

18 1. Virginia Herold (Complainant) brings this First Amended Accusation (Accusation)
19 solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of
20 Consumer Affairs.

21 2. On or about August 23, 2010, the Board of Pharmacy issued Pharmacist License No.
22 RPH 64465 to Vy Khanh Thi Nguyen (Respondent). The License was in full force and effect at all
23 times relevant to the charges brought herein and will expire on March 31, 2016, unless renewed.

24
25 JURISDICTION

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

1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or
7 suspension of a Board-issued license, the placement of a license on a retired status, or the
8 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
9 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
10 licensee or to render a decision suspending or revoking the license.

11
12 STATUTORY AND REGULATORY PROVISIONS

13 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
14 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
15 not be limited to, any of the following:

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

19 (g) Knowingly making or signing any certificate or other document that falsely represents
20 the existence or nonexistence of a state of facts.

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

23 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
24 of a licensee under this chapter.

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

1 8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
2 drug or dangerous device except upon the prescription of an authorized prescriber.

3 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
4 controlled substance, except that furnished upon a valid prescription/drug order.

5 10. Section 4324 of the Code, in pertinent part, makes it unlawful for any person to sign
6 the name of another, or to falsely make, alter, forge, utter, publish, pass, or attempt to pass, as
7 genuine, any prescription for any drug, or to possess any drugs secured by any such forgery.

8 11. Health and Safety Code section 11150 provides, in pertinent part, that no person other
9 than an authorized prescriber shall write or issue a prescription.

10 12. Health and Safety Code section 11157 provides that no person shall issue a
11 prescription that is false or fictitious in any respect.

12 13. Health and Safety Code section 11171 provides that no person shall prescribe,
13 administer, or furnish a controlled substance except under the conditions and in the manner
14 provided by Division 10 (commencing with section 11000) of the Health and Safety Code.

15 14. Health and Safety Code section 11173, subdivision (a), provides that no person shall
16 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
17 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
18 or subterfuge; or (2) by the concealment of a material fact.

19 15. Health and Safety Code section 11175 makes it unlawful for any person to obtain or
20 possess a prescription that does not comply with the Uniform Controlled Substances Act [Health
21 & Safety Code, § 11000 et seq.], to obtain a controlled substance by means of such non-compliant
22 prescription, or to possess a controlled substance obtained by such a prescription.

23 16. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
24 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
25 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

26 17. Health and Safety Code section 11368, in pertinent part, makes it unlawful to forge or
27 alter a prescription, issue or utter an altered prescription, issue or utter a prescription with forged
28

1 or fictitious signature for a narcotic drug, obtain a narcotic drug by a forged, fictitious, or altered
2 prescription, or possess a narcotic drug secured by a forged, fictitious, or altered prescription.

3 18. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess
4 certain Schedule I-III controlled substances, or any controlled substance in Schedules III-V which
5 is not a narcotic drug, unless upon written prescription of an authorized prescriber.

6 19. California Code of Regulations, title 16, section 1770, states:

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

13 14 COST RECOVERY

15 20. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
16 administrative law judge to direct a licensee found to have committed a violation of the licensing
17 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

18 19 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

20 21. Section 4021 of the Code states:

21 "‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
22 11053) of Division 10 of the Health and Safety Code."

23 22. Section 4022 of the Code states, in pertinent part:

24 "‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
25 except veterinary drugs that are labeled as such, and includes the following:

26 "(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
27 prescription,’ ‘Rx only,’ or words of similar import.

28 ...

1 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
2 prescription or furnished pursuant to Section 4006.”

3 23. **Dilaudid** is a brand name for **hydromorphone**, a Schedule II controlled substance as
4 designated by Health and Safety Code section 11055(b)(1)(J) and a dangerous drug as designated
5 by Business and Professions Code section 4022. It is a narcotic drug.

6 24. **Roxicodone** is a brand name for **oxycodone**, a Schedule II controlled substance as
7 designated by Health and Safety Code section 11055(b)(1)(M) and a dangerous drug as
8 designated by Business and Professions Code section 4022. It is a narcotic drug.

9 25. **Methadone** is a Schedule II controlled substance as designated by Health and Safety
10 Code section 11055(c)(14) and a dangerous drug as designated by Business and Professions Code
11 section 4022. It is a narcotic drug.

12 26. **Norco**, **Vicodin**, **Vicodin ES**, **Lortab**, and **Lorcet** are among the brand names for
13 compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III
14 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous
15 drug as designated by Business and Professions Code section 4022. The varying compounds are
16 also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

17 27. **Xanax** is a brand name for **alprazolam**, a Schedule IV controlled substance as
18 designated by Health and Safety Code section 11057(d)(1) and a dangerous drug as designated by
19 Business and Professions Code section 4022. It is a depressant drug.

20 28. **Valium** is a brand name for **diazepam**, which is a Schedule IV controlled substance
21 as designated by Health and Safety Code section 11057(d)(9) and a dangerous drug as designated
22 by Business and Professions Code section 4022. It is a depressant drug.

23
24 FACTUAL BACKGROUND

25 29. From on or about September 15, 2011 to on or about October 19, 2012, Respondent
26 was employed as a pharmacist at a Ralph's Pharmacy (PHY 46849) located in Costa Mesa, CA,
27 where by virtue of her employment she had access to controlled substances and dangerous drugs,
28 and to the means for entering prescriptions and refills into the data system, and dispensing same.

1 During her employment, Respondent used her access to divert/steal controlled substances, and/or
2 to aid/abet others in doing so, and/or to create/dispense unauthorized prescriptions or refills.

3 30. The exact number of instances of diversion/theft, aiding/abetting of diversion/theft,
4 and/or creation/dispensing of unauthorized prescriptions refills by Respondent, and the full
5 quantity of controlled substances diverted/stolen by Respondent, or dispensed pursuant to
6 unauthorized prescriptions or refills, are not known, but in the course of investigations conducted
7 by the pharmacy, by the Costa Mesa Police Department, and by the Board of Pharmacy, the
8 following were among the observations, admissions, and revelations reported:

9 a. In or about October 2012, a customer approached Pharmacist in Charge T.P.
10 and another pharmacist (J.L.) at the Ralph's Pharmacy where Respondent was employed to report
11 that Respondent was engaged in filling fraudulent prescriptions for **oxycodone** for customers.

12 b. Staff of the pharmacy then proceeded to contact the office(s) of prescriber(s) for
13 which the pharmacy had recently filled/dispensed **oxycodone** prescriptions, and discovered that
14 more than twenty (20) prescriptions filled/dispensed by Respondent were fraudulent, at least
15 some of which resulted from a prescription pad that had been stolen from the prescriber(s). All of
16 the prescriptions were filled between on or about July 26, 2012 and on or about October 8, 2012,
17 for several patients, all of whom used the same discount card, and all of whom paid cash for their
18 prescriptions. The prescriptions were for controlled substances including **hydromorphone**
19 (generic **Dilaudid**), **oxycodone** (generic **Roxicodone**), **methadone**, **hydrocodone with APAP**
20 **10/325** (generic **Norco**), **alprazolam** (generic **Xanax**), and **diazepam** (generic **Valium**).

21 c. During interviews with loss prevention staff for Ralph's Pharmacy and/or with
22 officer(s) for the Costa Mesa Police Department, Respondent admitted that she knew one of the
23 patients involved, A.D., who had approached Respondent asking her to fill his prescription(s).
24 She did, after which A.D. told Respondent he would send others to her to have their prescriptions
25 filled. She stated that A.D. would text her to let her know somebody was coming in, and she
26 would handle the transaction(s). Respondent reported that she was able to identify the clients by
27 their "body behavior." She admitted filling prescriptions knowing they were fraudulent. She
28 estimated doing this about twenty five (25) times, for about ten (10) different people.

d. A pharmacy technician (C.A.) who had worked regularly with Respondent between in or about May 2012 and in or about October 2012 stated to the Board Inspector(s) that he had several times during that period seen Respondent engage in suspicious transactions with customers who appeared to be "high" or intoxicated, wherein Respondent would handle the entire transaction from start to finish, even ringing up the sales on the cash register, and would go out to the front of the store to speak with them before or after concluding their transactions.

e. On at least three (3) of the fraudulent prescriptions, Respondent made notations indicating that she had contacted the office(s) of the prescriber(s) to verify the prescriptions.

f. At least the following fraudulent prescriptions for controlled substances were dispensed by Respondent between on or about July 30, 2012 and on or about October 8, 2012:

Patient	Prescription No.	Drug Dispensed	Quantity	Date Dispensed
A.D.	2303203	Oxycodone 30mg	150	07/30/2012
A.D.	4509282	Alprazolam 2mg	60	07/30/2012
A.D.	4509281	Hydrocodone/APAP 10/325	120	07/30/2012
P.K.	4509581	Hydrocodone/APAP 10/325	120	09/02/2012
P.K.	2303314	Oxycodone 30mg	240	09/02/2012
P.K.	4509582	Alprazolam 2mg	60	09/02/2012
R.W.	4509589	Hydrocodone/APAP 10/325	150	09/04/2012
R.W.	4509590	Alprazolam 2mg	60	09/04/2012
A.D.	2303317	Hydromorphone 8mg	120	09/04/2012
A.D.	2303319	Methadone 10mg	230	09/04/2012
A.D.	2303318	Oxycodone 30mg	180	09/05/2012
R.W.	2303320	Oxycodone 30mg	180	09/07/2012
K.E.	2303385	Oxycodone 30mg	180	09/19/2012
K.E.	4509743	Hydrocodone/APAP 10/325	120	09/19/2012
K.E.	2303384	Hydromorphone 8mg	150	09/21/2012

Patient	Prescription No.	Drug Dispensed	Quantity	Date Dispensed
P.K.	2303314	Oxycodone 30mg	180	09/30/2012
P.K.	4509831	Hydrocodone/APAP 10/325	150	09/30/2012
P.K.	2303424	Hydromorphone 8mg	110	09/30/2012
M.L.	2303454	Oxycodone 30mg	180	10/08/2012
M.L.	4509899	Hydrocodone/APAP 10/325	120	10/08/2012
M.L.	4509900	Alprazolam 2mg	60	10/08/2012
R.W.	2303453	Oxycodone 30mg	180	10/08/2012
Total Quantities Dispensed On These Prescriptions:			1,470 Oxycodone 240 Alprazolam 780 Hydrocodone/APAP 380 Hydromorphone 230 Methadone	

31. On or about October 17, 2012, based on the foregoing, Respondent was arrested by the Costa Mesa Police Department on suspicion of violating Penal Code section 459 (Burglary).

FIRST CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

32. Respondent is subject to discipline under section 4301(f) of the Code in that Respondent, as described in paragraphs 29 and 30 above, committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

SECOND CAUSE FOR DISCIPLINE

(Creation/Signature of False Documents)

33. Respondent is subject to discipline under section 4301(g) of the Code in that Respondent, as described in paragraphs 29 and 30 above, created and/or signed documents that falsely represented the existence or nonexistence of a state of facts.

1 THIRD CAUSE FOR DISCIPLINE

2 (Conviction of Substantially Related Crime(s))

3 34. Respondent is subject to discipline under section 4301(l) and/or section 490 of the
4 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of
5 substantially related crime(s), in that on or about February 6, 2014, in the criminal case *People v.*
6 *Vy Khanh Thi Nguyen*, Case No. 13WF1064 in Orange County Superior Court (West), Respondent
7 was convicted of six (6) misdemeanor counts of violating Health and Safety Code section 11368
8 (Forging/Issuing Prescription, or Obtaining or Possessing Drugs Secured by Forged Prescription).
9 The conviction was entered as follows:

10 a. On or about October 17, 2012, based on the allegations in paragraphs 29 and 30
11 above, Respondent was arrested by the Costa Mesa Police Department on suspicion of violating
12 Penal Code section 459 (Burglary).

13 b. On or about April 10, 2013, in *People v. Vy Khanh Thi Nguyen*, Case No.
14 13WF1064 in Orange County Superior Court (West), Respondent was charged with six (6) felony
15 counts of violating Health and Safety Code section 11368 (Forging/Issuing Prescription, or
16 Obtaining or Possessing Drugs Secured by Forged Prescription).

17 c. On or about February 6, 2014, all six (6) counts were reduced to misdemeanors
18 and Respondent entered pleas of guilty as to all six (6) misdemeanor counts. Imposition of
19 sentence was suspended and Respondent was placed on formal probation for three (3) years, on
20 terms and conditions including 30 days in county jail, with jail time stayed pending completion of
21 240 hours of community service, and required payment of fines and fees.

22
23 FOURTH CAUSE FOR DISCIPLINE

24 (Furnishing of Controlled Substance)

25 35. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
26 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, as described
27 in paragraphs 29 and 30 above, furnished to herself or another without a valid prescription, and/or
28 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

1 FIFTH CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substance)

3 36. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
4 4060 of the Code, and/or Health and Safety Code section(s) 11350 and/or 11377, in that
5 Respondent, as described in paragraphs 29 and 30 above, possessed, conspired to possess, and/or
6 assisted in or abetted possession of, a controlled substance, without a prescription.

7
8 SIXTH CAUSE FOR DISCIPLINE

9 (Making, Uttering and/or Using False or Forged Prescriptions)

10 37. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
11 4324 of the Code, and/or Health and Safety Code section(s) 11157 and/or 11368, in that
12 Respondent, as described in paragraphs 29 and 30 above, falsely made, altered, forged, uttered,
13 published, passed, or attempted to pass, a false, forged, fictitious or altered prescription for a
14 (narcotic) drug, had in his possession a (narcotic) drug secured by a false, forged, fictitious or
15 altered prescription, or conspired and/or assisted in or abetted any of these acts.

16
17 SEVENTH CAUSE FOR DISCIPLINE

18 (Issuance, Furnishing Pursuant To, and/or Use of Invalid Prescription(s))

19 38. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
20 and/or Health and Safety Code section(s) 11150, 11171, and/or 11175, in that Respondent, as
21 described in paragraphs 29 and 30 above, issued prescriptions without authority to do so,
22 prescribed, administered, or furnished controlled substances under conditions other than those
23 authorized by the Uniform Controlled Substances Act, obtained or possessed an invalid
24 prescription, obtained or possessed a controlled substance by means of such invalid prescription,
25 or conspired and/or assisted in or abetted any of these acts.

26 ///

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28 ///

1 EIGHTH CAUSE FOR DISCIPLINE

2 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

3 39. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
4 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
5 29 and 30 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
6 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

7
8 NINTH CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct)

10 40. Respondent is subject to discipline under section 4301 of the Code in that
11 Respondent, as described in paragraphs 29 to 39 above, engaged in unprofessional conduct.

12
13 PRAYER

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

- 16 1. Revoking or suspending Pharmacist License Number RPH 64465, issued to Vy Khanh
17 Thi Nguyen (Respondent);
- 18 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
19 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 20 3. Taking such other and further action as is deemed necessary and proper.

21 DATED: 4/8/14

22 
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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6
7 **BEFORE THE**
BOARD OF PHARMACY
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 4911

11 **VYKHANH THI NGUYEN**
12 **746 Woodhams Road**
Santa Clara, CA 95051

A C C U S A T I O N

13 **Pharmacist License No. RPH 64465**

14 Respondent.

15 Complainant alleges:

16
17 PARTIES

18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

20 2. On or about August 23, 2010, the Board of Pharmacy issued Pharmacist License No.
21 RPH 64465 to Vy Khanh Thi Nguyen (Respondent). The License was in full force and effect at all
22 times relevant to the charges brought herein and will expire on March 31, 2014, unless renewed.

23
24 JURISDICTION

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

1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or
7 suspension of a Board-issued license, the placement of a license on a retired status, or the
8 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
9 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
10 licensee or to render a decision suspending or revoking the license.

11
12 STATUTORY AND REGULATORY PROVISIONS

13 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
14 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
15 not be limited to, any of the following:

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

19 (g) Knowingly making or signing any certificate or other document that falsely represents
20 the existence or nonexistence of a state of facts.

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

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

27 8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
28 drug or dangerous device except upon the prescription of an authorized prescriber.

1 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
2 controlled substance, except that furnished upon a valid prescription/drug order.

3 10. Section 4324 of the Code, in pertinent part, makes it unlawful for any person to sign
4 the name of another, or to falsely make, alter, forge, utter, publish, pass, or attempt to pass, as
5 genuine, any prescription for any drug, or to possess any drugs secured by any such forgery.

6 11. Health and Safety Code section 11150 provides, in pertinent part, that no person other
7 than an authorized prescriber shall write or issue a prescription.

8 12. Health and Safety Code section 11157 provides that no person shall issue a
9 prescription that is false or fictitious in any respect.

10 13. Health and Safety Code section 11171 provides that no person shall prescribe,
11 administer, or furnish a controlled substance except under the conditions and in the manner
12 provided by Division 10 (commencing with section 11000) of the Health and Safety Code.

13 14. Health and Safety Code section 11173, subdivision (a), provides that no person shall
14 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
15 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
16 or subterfuge; or (2) by the concealment of a material fact.

17 15. Health and Safety Code section 11175 makes it unlawful for any person to obtain or
18 possess a prescription that does not comply with the Uniform Controlled Substances Act [Health
19 & Safety Code, § 11000 et seq.], to obtain a controlled substance by means of such non-compliant
20 prescription, or to possess a controlled substance obtained by such a prescription.

21 16. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
22 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
23 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

24 17. Health and Safety Code section 11368, in pertinent part, makes it unlawful to forge or
25 alter a prescription, issue or utter an altered prescription, issue or utter a prescription with forged
26 or fictitious signature for a narcotic drug, obtain a narcotic drug by a forged, fictitious, or altered
27 prescription, or possess a narcotic drug secured by a forged, fictitious, or altered prescription.

28 ///

1 18. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess
2 certain Schedule I-III controlled substances, or any controlled substance in Schedules III-V which
3 is not a narcotic drug, unless upon written prescription of an authorized prescriber.

4 19. California Code of Regulations, title 16, section 1770, states:

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

11 12 COST RECOVERY

13 20. 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 of the licensing
15 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

16 17 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

18 21. Section 4021 of the Code states:

19 "'Controlled substance' means any substance listed in Chapter 2 (commencing with Section
20 11053) of Division 10 of the Health and Safety Code."

21 22. Section 4022 of the Code states, in pertinent part:

22 "'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use,
23 except veterinary drugs that are labeled as such, and includes the following:

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

26 ...

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

1 23. **Dilaudid** is a brand name for **hydromorphone**, a Schedule II controlled substance as
2 designated by Health and Safety Code section 11055(b)(1)(J) and a dangerous drug as designated
3 by Business and Professions Code section 4022. It is a narcotic drug.

4 24. **Roxicodone** is a brand name for **oxycodone**, a Schedule II controlled substance as
5 designated by Health and Safety Code section 11055(b)(1)(M) and a dangerous drug as
6 designated by Business and Professions Code section 4022. It is a narcotic drug.

7 25. **Methadone** is a Schedule II controlled substance as designated by Health and Safety
8 Code section 11055(c)(14) and a dangerous drug as designated by Business and Professions Code
9 section 4022. It is a narcotic drug.

10 26. **Norco**, **Vicodin**, **Vicodin ES**, **Lortab**, and **Lorcet** are among the brand names for
11 compounds of varying dosages of acetaminophen (aka APAP) and **hydrocodone**, a Schedule III
12 controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous
13 drug as designated by Business and Professions Code section 4022. The varying compounds are
14 also known generically as **Hydrocodone with APAP**. These are all narcotic drugs.

15 27. **Xanax** is a brand name for **alprazolam**, a Schedule IV controlled substance as
16 designated by Health and Safety Code section 11057(d)(1) and a dangerous drug as designated by
17 Business and Professions Code section 4022. It is a depressant drug.

18 28. **Valium** is a brand name for **diazepam**, which is a Schedule IV controlled substance
19 as designated by Health and Safety Code section 11057(d)(9) and a dangerous drug as designated
20 by Business and Professions Code section 4022. It is a depressant drug.

21
22 FACTUAL BACKGROUND

23 29. From on or about September 15, 2011 to on or about October 19, 2012, Respondent
24 was employed as a pharmacist at a Ralph's Pharmacy (PHY 46849) located in Costa Mesa, CA,
25 where by virtue of her employment she had access to controlled substances and dangerous drugs,
26 and to the means for entering prescriptions and refills into the data system, and dispensing same.
27 During her employment, Respondent used her access to divert/steal controlled substances, and/or
28 to aid/abet others in doing so, and/or to create/dispense unauthorized prescriptions or refills.

1 30. The exact number of instances of diversion/theft, aiding/abetting of diversion/theft,
2 and/or creation/dispensing of unauthorized prescriptions refills by Respondent, and the full
3 quantity of controlled substances diverted/stolen by Respondent, or dispensed pursuant to
4 unauthorized prescriptions or refills, are not known, but in the course of investigations conducted
5 by the pharmacy, by the Costa Mesa Police Department, and by the Board of Pharmacy, the
6 following were among the observations, admissions, and revelations reported:

7 a. In or about October 2012, a customer approached Pharmacist in Charge T.P.¹
8 and another pharmacist (J.L.) at the Ralph's Pharmacy where Respondent was employed to report
9 that Respondent was engaged in filling fraudulent prescriptions for **oxycodone** for customers.

10 b. Staff of the pharmacy then proceeded to contact the office(s) of prescriber(s) for
11 which the pharmacy had recently filled/dispensed **oxycodone** prescriptions, and discovered that
12 more than twenty (20) prescriptions filled/dispensed by Respondent were fraudulent, at least
13 some of which resulted from a prescription pad that had been stolen from the prescriber(s). All of
14 the prescriptions were filled between on or about July 26, 2012 and on or about October 8, 2012,
15 for several patients, all of whom used the same discount card, and all of whom paid cash for their
16 prescriptions. The prescriptions were for controlled substances including **hydromorphone**
17 (generic **Dilaudid**), **oxycodone** (generic **Roxicodone**), **methadone**, **hydrocodone with APAP**
18 **10/325** (generic **Norco**), **alprazolam** (generic **Xanax**), and **diazepam** (generic **Valium**).

19 c. During interviews with loss prevention staff for Ralph's Pharmacy and/or with
20 officer(s) for the Costa Mesa Police Department, Respondent admitted that she knew one of the
21 patients involved, A.D., who had approached Respondent asking her to fill his prescription(s).
22 She did, after which A.D. told Respondent he would send others to her to have their prescriptions
23 filled. She stated that A.D. would text her to let her know somebody was coming in, and she
24 would handle the transaction(s). Respondent reported that she was able to identify the clients by
25 their "body behavior." She admitted filling prescriptions knowing they were fraudulent. She
26 estimated doing this about twenty five (25) times, for about ten (10) different people.

27
28 ¹ Full names for all abbreviated names can be provided to Respondent during discovery.

d. A pharmacy technician (C.A.) who had worked regularly with Respondent between in or about May 2012 and in or about October 2012 stated to the Board Inspector(s) that he had several times during that period seen Respondent engage in suspicious transactions with customers who appeared to be "high" or intoxicated, wherein Respondent would handle the entire transaction from start to finish, even ringing up the sales on the cash register, and would go out to the front of the store to speak with them before or after concluding their transactions.

e. On at least three (3) of the fraudulent prescriptions, Respondent made notations indicating that she had contacted the office(s) of the prescriber(s) to verify the prescriptions.

f. At least the following fraudulent prescriptions for controlled substances were dispensed by Respondent between on or about July 30, 2012 and on or about October 8, 2012:

Patient	Prescription No.	Drug Dispensed	Quantity	Date Dispensed
A.D.	2303203	Oxycodone 30mg	150	07/30/2012
A.D.	4509282	Alprazolam 2mg	60	07/30/2012
A.D.	4509281	Hydrocodone/APAP 10/325	120	07/30/2012
P.K.	4509581	Hydrocodone/APAP 10/325	120	09/02/2012
P.K.	2303314	Oxycodone 30mg	240	09/02/2012
P.K.	4509582	Alprazolam 2mg	60	09/02/2012
R.W.	4509589	Hydrocodone/APAP 10/325	150	09/04/2012
R.W.	4509590	Alprazolam 2mg	60	09/04/2012
A.D.	2303317	Hydromorphone 8mg	120	09/04/2012
A.D.	2303319	Methadone 10mg	230	09/04/2012
A.D.	2303318	Oxycodone 30mg	180	09/05/2012
R.W.	2303320	Oxycodone 30mg	180	09/07/2012
K.E.	2303385	Oxycodone 30mg	180	09/19/2012
K.E.	4509743	Hydrocodone/APAP 10/325	120	09/19/2012
K.E.	2303384	Hydromorphone 8mg	150	09/21/2012

Patient	Prescription No.	Drug Dispensed	Quantity	Date Dispensed
P.K.	2303314	Oxycodone 30mg	180	09/30/2012
P.K.	4509831	Hydrocodone/APAP 10/325	150	09/30/2012
P.K.	2303424	Hydromorphone 8mg	110	09/30/2012
M.L.	2303454	Oxycodone 30mg	180	10/08/2012
M.L.	4509899	Hydrocodone/APAP 10/325	120	10/08/2012
M.L.	4509900	Alprazolam 2mg	60	10/08/2012
R.W.	2303453	Oxycodone 30mg	180	10/08/2012
Total Quantities Dispensed On These Prescriptions:			1,470 Oxycodone 240 Alprazolam 780 Hydrocodone/APAP 380 Hydromorphone 230 Methadone	

31. On or about October 17, 2012, based on the foregoing, Respondent was arrested by the Costa Mesa Police Department on suspicion of violating Penal Code section 459 (Burglary). Respondent was subsequently criminally charged, in *People v. Vy Khanh Thi Nguyen*, Case No. 13WF1064 in Orange County Superior Court, with six (6) felony counts of violating Health and Safety Code section 11368 (Forging or Altering a Prescription). That case is still pending.

FIRST CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

32. Respondent is subject to discipline under section 4301(f) of the Code in that Respondent, as described in paragraphs 29 to 31 above, committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Creation/Signature of False Documents)

3 33. Respondent is subject to discipline under section 4301(g) of the Code in that
4 Respondent, as described in paragraphs 29 to 31 above, created and/or signed documents that
5 falsely represented the existence or nonexistence of a state of facts.

6
7 THIRD CAUSE FOR DISCIPLINE

8 (Furnishing of Controlled Substance)

9 34. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
10 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, as described
11 in paragraphs 29 to 31 above, furnished to herself or another without a valid prescription, and/or
12 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

13
14 FOURTH CAUSE FOR DISCIPLINE

15 (Possession of Controlled Substance)

16 35. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
17 4060 of the Code, and/or Health and Safety Code section(s) 11350 and/or 11377, in that
18 Respondent, as described in paragraphs 29 to 31 above, possessed, conspired to possess, and/or
19 assisted in or abetted possession of, a controlled substance, without a prescription.

20
21 FIFTH CAUSE FOR DISCIPLINE


22 (Making, Uttering and/or Using False or Forged Prescriptions)

23 36. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
24 4324 of the Code, and/or Health and Safety Code section(s) 11157 and/or 11368, in that
25 Respondent, as described in paragraphs 29 to 31 above, falsely made, altered, forged, uttered,
26 published, passed, or attempted to pass, a false, forged, fictitious or altered prescription for a
27 (narcotic) drug, had in his possession a (narcotic) drug secured by a false, forged, fictitious or
28 altered prescription, or conspired and/or assisted in or abetted any of these acts.

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;

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

DATED: 11/4/13


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

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