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

In the Matter of the Accusation Against:
DENNY LOTAKOON
1086 W. Grand Avenue
Oakland, CA 94507
Pharmacy Technician Registration No. TCH
77727

Respondent.

Case No. 5080
DEFAULT DECISION AND ORDER
[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about November 4, 2014, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5080 against Denny Lotakoon (Respondent) before the Board of Pharmacy. (Accusation attached as exhibit A.)
2. On or about August 3, 2007, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 77727 to Denny Lotakoon (Respondent). The Pharmacy Technician Registration expired on August 31, 2013, and has not been renewed. This lapse in licensure, however, pursuant to Business and Professions Code section 118, subdivision (b) does not deprive the Board of its authority to institute or continue this disciplinary proceeding

1 3. On or about November 14, 2014, Respondent was served by First Class Mail copies
2 of the Accusation No. 5080, Statement to Respondent, Notice of Defense, Request for Discovery,
3 and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
4 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
5 is required to be reported and maintained with the Board. Respondent's address of record was
6 and is:

7 DENNY LOTAKOON
8 1086 W. Grand Avenue
9 Oakland, CA 94507

10 4. Pursuant to Business and Professions Code section 136 and/or 4100, and/or title 16,
11 California Code of Regulations, section 1704, Respondent's address of record, and any changes
12 thereto, are required to be reported and maintained with the Board of Pharmacy (Board).

13 5. Service of the Accusation was effective as a matter of law under Government Code
14 section 11505, subdivision (c) and/or Business & Professions Code section 124.

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

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

21 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
22 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5080.

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

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

28 9. Pursuant to its authority under Government Code section 11520, the Board finds
Respondent is in default. The Board will take action without further hearing and, based on the
relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits and statements contained therein on

1 file at the Board's offices regarding the allegations contained in Accusation No. 5080, finds that
2 the charges and allegations in Accusation No. 5080, are separately and severally, found to be true
3 and correct by clear and convincing evidence.

4 10. Taking official notice of its own internal records, pursuant to Business and
5 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
6 and Enforcement is \$1,667.50 as of December 12, 2014.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Denny Lotakoon has subjected
9 his Pharmacy Technician License No. TCH 77727 to discipline.

10 2. The agency has jurisdiction to adjudicate this case by default.

11 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
12 License based upon the following violations alleged in the Accusation which are supported by the
13 evidence contained in the Default Decision Evidence Packet in this case:

14 a. Respondent's License is subject to revocation pursuant to Business and
15 Professions Code section 4301, subdivision (l), for conviction of a substantially related crime,
16 because on or about August 15, 2013, in a criminal matter entitled *The People of the State of*
17 *California v. Denny Latakoon*, Contra County Superior Court Case No. 314236-1, Respondent
18 was convicted by guilty plea to embezzlement (Pen. Code, § 508), a felony. The court sentenced
19 Respondent to serve three days in jail and three years of court probation, and ordered him to
20 comply with other terms and conditions. The court ordered that if Respondent completed the
21 Penal Code section 1000 program, it will reduce the embezzlement conviction to a misdemeanor.
22 The court dismissed the charge of selling controlled substances (Health & Saf. Code, § 11352).

23 b. The circumstances of the conviction are that from on or about October 8, 2007,
24 while employed as a pharmacy technician at the Kaiser Pharmacy in Pinole, California,
25 Respondent began diverting drugs. Starting in or around September 2012, due to an
26 inconsistency in Norco tablets they had versus what they should have had, Kaiser Pharmacy
27 began to audit and investigate to identify the source or sources of the loss. Between April 1, and
28 25, 2013, Kaiser Pharmacy video camera footage shows Respondent diverting bottles Norco

1 tablets on four occasions. In around April 2013, Respondent diverted approximately 640 Norco
2 tablets from Kaiser Pharmacy. Respondent admitted to a National Special Investigations Unit
3 special investigator to diverting and selling an unknown amount of Norco for approximately three
4 months. On or about May 17, 2013, Respondent resigned from Kaiser.

5 c. Respondent's License is subject to revocation pursuant to Business and
6 Professions Code section 4301, subdivisions (j) and (o), for unprofessional conduct – violation of
7 state statutes regulating controlled substances and dangerous drugs, because Respondent engaged
8 in unprofessional conduct, as described above.

9 d. Respondent's License is subject to revocation pursuant to Business and
10 Professions Code section 4301, subdivision (f) for unprofessional conduct – dishonesty, because
11 Respondent engaged in unprofessional conduct, as described above.

12 e. Respondent's License is subject to revocation pursuant to Business and
13 Professions Code section 4301, subdivision (l) for unprofessional conduct – conviction of a
14 substantially related crime, as described above.

15 ORDER

16 IT IS SO ORDERED that Pharmacy Technician License No. TCH 77727, issued to
17 Respondent Denny Lotakoon, is revoked.

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

22 This Decision shall become effective on February 27, 2015.

23 It is so ORDERED January 28, 2015.

24 BOARD OF PHARMACY
25 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

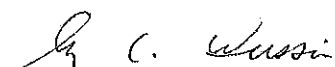
26 By 
27 STAN C. WEISSER
28 Board President

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SHANA A. BAGLEY
Deputy Attorney General
4 State Bar No. 169423
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2129
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5080

12 **DENNY LOTAKOON**
1086 W. Grand Avenue
13 Oakland, CA 94507

A C C U S A T I O N

14 Pharmacy Technician Registration No. TCH
77727

15 Respondent.
16

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about August 3, 2007, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 77727 to Denny Lotakoon (Respondent). The Pharmacy Technician
23 Registration expired on August 31, 2013, and has not been renewed.

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.
28

1 4. Code section 118, subdivision (b), provides that the suspension, expiration, surrender,
2 cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed
3 with a disciplinary action during the period within which the license may be renewed, restored,
4 reissued or reinstated.

5 5. Code section 4300.1 states:

6 The expiration, cancellation, forfeiture, or suspension of a board-issued license
7 by operation of law or by order or decision of the board or a court of law, the
8 placement of a license on a retired status, or the voluntary surrender of a license by a
9 licensee shall not deprive the board of jurisdiction to commence or proceed with any
investigation of, or action or disciplinary proceeding against, the licensee or to render
a decision suspending or revoking the license.

10 STATUTORY AND REGULATORY PROVISIONS

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

16 7. Code section 4060 states, in part:

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

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1 8. Code section 4300 states:

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

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

6 (1) Suspending judgment.

7 (2) Placing him or her upon probation.

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

9 (4) Revoking his or her license.

10 (5) Taking any other action in relation to disciplining him or her as the board in
11 its discretion may deem proper.

12 (c) The board may refuse a license to any applicant guilty of unprofessional
13 conduct. The board may, in its sole discretion, issue a probationary license to any
14 applicant for a license who is guilty of unprofessional conduct and who has met all
15 other requirements for licensure. The board may issue the license subject to any
16 terms or conditions not contrary to public policy, including, but not limited to, the
17 following:

16 (1) Medical or psychiatric evaluation.

17 (2) Continuing medical or psychiatric treatment.

18 (3) Restriction of type or circumstances of practice.

19 (4) Continuing participation in a board-approved rehabilitation program.

20 (5) Abstention from the use of alcohol or drugs.

21 (6) Random fluid testing for alcohol or drugs.

22 (7) Compliance with laws and regulations governing the practice of pharmacy.

23 (d) The board may initiate disciplinary proceedings to revoke or suspend any
24 probationary certificate of licensure for any violation of the terms and conditions of
25 probation. Upon satisfactory completion of probation, the board shall convert the
26 probationary certificate to a regular certificate, free of conditions.

1 (e) The proceedings under this article shall be conducted in accordance with
2 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the
3 Government Code, and the board shall have all the powers granted therein. The
4 action shall be final, except that the propriety of the action is subject to review by the
5 superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

6 9. Code section 4301 states, in part:

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

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

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

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

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

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

6 11. Health and Safety Code section 11171 provides that no person shall prescribe,
7 administer, or furnish a controlled substance except under the conditions and in the manner
8 provided by the state Uniform Controlled Substances Act, Health and Safety Code section 11000
9 et seq.

10 12. Health and Safety Code section 11173, subdivision (a), provides, in part, that no
11 person shall obtain, or attempt to obtain controlled substances by fraud, deceit, misrepresentation,
12 or subterfuge.

13 13. Health and Safety Code section 11350, subdivision (a), provides that no person shall
14 possess a controlled substance without a prescription.

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

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

23 COST RECOVERY

24 15. Code section 125.3 states, in part, that the Board may request the administrative law
25 judge to direct a licentiate found to have committed a violation or violations of the licensing act to
26 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

1
2 16. Norco is the trade name for Hydrocodone 10mg and Acetaminophen 325mg, which is
3 designated as a Schedule III controlled substance by Health and Safety Code section 11056,
4 subdivision(e)(4). and as a dangerous drug by Business and Professions Code section 4022.

5 Hydrocodone is a narcotic analgesic for the pain relief.

FACTUAL STATEMENT

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7
8 17. From on or about October 8, 2007, Kaiser Pharmacy in Pinole, California, employed
9 Respondent as a pharmacy technician.

10 18. Starting in or around September 2012, due to an inconsistency in Norco tablets they
11 had versus what they should have had, Kaiser Pharmacy began to audit and investigate to identify
12 the source or sources of the loss. Between April 1, and 25, 2013, Kaiser Pharmacy video camera
13 footage shows Respondent diverting bottles Norco tablets on four occasions.

14
15 19. In around April 2013, Respondent diverted approximately 640 Norco tablets from
16 Kaiser Pharmacy.

17 20. Respondent admitted to a National Special Investigations Unit special investigator to
18 diverting and selling an unknown amount of Norco for approximately three months.

19 21. On or about May 17, 2013, Respondent resigned from Kaiser.

20
21 22. On or about August 15, 2013, in a criminal matter entitled *The People of the State of*
22 *California v. Denny Latakoon*, Contra County Superior Court Case No. 314236-1, Respondent
23 was convicted by guilty plea to embezzlement (Pen. Code, § 508), a felony. The court sentenced
24 Respondent to serve three days in jail and three years of court probation, and ordered him to
25 comply with other terms and conditions. The court ordered that if Respondent completed the
26 Penal Code section 1000 program, it will reduce the embezzlement conviction to a misdemeanor.
27 The court dismissed the charge of selling controlled substances (Health & Saf. Code, § 11352).
28

1 FIRST CAUSE FOR DISCIPLINE

2 (Substantially Related Conviction)

3 23. Respondent's license is subject to discipline because he was convicted of
4 embezzlement. (Bus. & Prof. Code, § and Cal. Code Regs., tit. 16, §1770.). The circumstances
5 are more particularly set forth in paragraph 2, above.

6 SECOND CAUSE FOR DISCIPLINE

7 (Unprofessional Conduct: Commission of Acts of Moral Turpitude)

8 24. Respondent's license is subject to discipline because he committed acts involving
9 moral turpitude, dishonesty, fraud, deceit, or corruption because he stole, diverted, and resold
10 controlled substances and dangerous drugs during his employment as a pharmacy technician at
11 Kaiser Pharmacy. (Bus. & Prof. Code, § 4301, subd. (f).) The circumstances are more
12 particularly set forth in paragraphs 18 through 24, above.

13 THIRD CAUSE FOR DISCIPLINE

14 (Unprofessional Conduct - Violating State Statutes re: Controlled Substances)

15 25. Respondent's license is subject to discipline for violating state statutes regulating
16 controlled substances and dangerous drugs, including, but not limited to, Code section 4060 and
17 Health and Safety Code sections 11170, 11171, 11173, subdivision (a), and 11350, subdivision
18 (a), because he unlawfully obtained and possessed controlled substances and dangerous drugs.
19 (Bus. & Prof. Code, § 4301, subd. (j).) The circumstances are more particularly set forth in
20 paragraphs 18 through 23, above.

21 FOURTH CAUSE FOR DISCIPLINE

22 (Unprofessional Conduct - Violating Provisions of the Pharmacy Law)

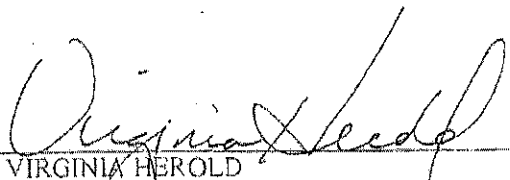
23 26. Respondent's license is subject to discipline for violating the provisions of the
24 Pharmacy Law (commencing with Code section 4000, et seq.) and applicable federal and state
25 laws and regulations governing pharmacy because he unlawfully possessed and furnished to
26 himself controlled substances and dangerous drugs without a prescription in violation of Code
27 sections 4059 and 4060. (Bus. & Prof. Code, § 4301, subd. (o).) The circumstances are more
28 particularly set forth in paragraphs 18 through 26, above.

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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 77727, issued to Denny Lotakoon;
2. Ordering Denny Lotakoon to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 11/4/14 
VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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