

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

In the Matter of the Accusation Against:

SUSAN XIONG
1661 W. Kanai Avenue
Porterville, CA 93257

Pharmacy Technician Registration No. TCH
85081

Respondent.

Case No. 5896

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

DECISION AND ORDER

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

This Decision shall become effective at 5:00 p.m. on June 29, 2017.

It is so ORDERED on May 30, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

1 XAVIER BECERRA
Attorney General of California
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Supervising Deputy Attorney General
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8
9 **BEFORE THE**
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DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 5896

12 **SUSAN XIONG**
13 **1661 W. Kanai Avenue**
14 **Porterville, CA 93257**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 **Pharmacy Technician Registration No. TCH**
85081

16 Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Virginia K. Herold (Complainant) is the Executive Officer of the California State
22 Board of Pharmacy ("Board"). Complainant brought this action solely in her official capacity and
23 is represented in this matter by Xavier Becerra, Attorney General of the State of California, by
24 Daniel D. McGee, Deputy Attorney General.

25 2. Respondent Susan Xiong (Respondent) is represented in this proceeding by attorney
26 Joseph W. Rose, whose address is:

27 Joseph W. Rose
28 Rose Law, APC

1 11335 Gold Express Drive, Suite 135
2 Gold River, CA 95670

3 3. On or about August 7, 2008, the Board issued Pharmacy Technician Registration No.
4 TCH 85081 to Susan Xiong (Respondent). The Pharmacy Technician Registration was in full
5 force and effect at all times relevant to the charges brought in Accusation No. 5896, and will
6 expire on February 28, 2018, unless renewed.

7 JURISDICTION

8 4. Accusation No. 5896 was filed before the Board, and is currently pending against
9 Respondent. The Accusation and all other statutorily required documents were properly served
10 on Respondent on February 9, 2017. Respondent timely filed her Notice of Defense contesting
11 the Accusation.

12 5. A copy of Accusation No. 5896 is attached as Exhibit A and incorporated herein by
13 reference.

14 ADVISEMENT AND WAIVERS

15 6. Respondent has carefully read, fully discussed with counsel, and understands the
16 charges and allegations in Accusation No. 5896. Respondent has also carefully read, fully
17 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
18 Order.

19 7. Respondent is fully aware of her legal rights in this matter, including the right to a
20 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
21 the witnesses against her; the right to present evidence and to testify on her own behalf; the right
22 to the issuance of subpoenas to compel the attendance of witnesses and the production of
23 documents; the right to reconsideration and court review of an adverse decision; and all other
24 rights accorded by the California Administrative Procedure Act and other applicable laws.

25 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
26 every right set forth above.

27 CULPABILITY

28 9. Respondent admits the truth of each and every charge and allegation in Accusation

1 No. 5896.

2 10. Respondent agrees that her Pharmacy Technician Registration is subject to discipline
3 and she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary
4 Order below.

5 CONTINGENCY

6 11. The parties understand and agree that Portable Document Format (PDF) and facsimile
7 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
8 signatures thereto, shall have the same force and effect as the originals.

9 12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
10 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
11 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
12 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
13 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
14 writing executed by an authorized representative of each of the parties.

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

18 DISCIPLINARY ORDER

19 IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 85081 issued
20 to Respondent Susan Xiong is revoked. However, the revocation is stayed and Respondent is
21 placed on probation for five (5) years on the following terms and conditions.

22 1. **Suspension**

23 As part of probation, Respondent is suspended from working as a pharmacy technician for
24 30 days beginning the effective date of this decision.

25 During suspension, Respondent shall not enter any pharmacy area or any portion of or any
26 other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other
27 distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and
28 devices or controlled substances are maintained. Respondent shall not do any act involving drug

1 selection, selection of stock, manufacturing, compounding or dispensing; nor shall Respondent
2 manage, administer, or assist any licensee of the Board. Respondent shall not have access to or
3 control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled
4 substances.

5 Respondent shall not direct, control or perform any aspect of the practice of pharmacy.
6 Subject to the above restrictions, Respondent may continue to own or hold an interest in any
7 licensed premises in which he or she holds an interest at the time this decision becomes effective
8 unless otherwise specified in this order.

9 Failure to comply with this suspension shall be considered a violation of probation.

10 **2. Obey All Laws**

11 Respondent shall obey all state and federal laws and regulations.

12 Respondent shall report any of the following occurrences to the Board, in writing, within
13 seventy-two (72) hours of such occurrence:

- 14 • An arrest or issuance of a criminal complaint for violation of any provision of the
15 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
16 substances laws;
- 17 • A plea of guilty or nolo contendere in any state or federal criminal proceeding to any
18 criminal complaint, information or indictment;
- 19 • A conviction of any crime;
- 20 • Discipline, citation, or other administrative action filed by any state or federal
21 agency which involves Respondent's pharmacy technician license or which is
22 related to the practice of pharmacy or the manufacturing, obtaining, handling,
23 distributing, billing, or charging for any drug, device or controlled substance.

24 Failure to timely report any such occurrence shall be considered a violation of probation.

25 **3. Report to the Board**

26 Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its
27 designee. The report shall be made either in person or in writing, as directed. Among other
28 requirements, Respondent shall state in each report under penalty of perjury whether there has

1 been compliance with all the terms and conditions of probation. Failure to submit timely reports
2 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
3 in submission of reports as directed may be added to the total period of probation. Moreover, if
4 the final probation report is not made as directed, probation shall be automatically extended until
5 such time as the final report is made and accepted by the Board.

6 **4. Interview with the Board**

7 Upon receipt of reasonable prior notice, Respondent shall appear in person for interviews
8 with the Board or its designee, at such intervals and locations as are determined by the Board or
9 its designee. Failure to appear for any scheduled interview without prior notification to Board
10 staff, or failure to appear at two (2) or more scheduled interviews with the Board or its designee
11 during the period of probation, shall be considered a violation of probation.

12 **5. Cooperate with Board Staff**

13 Respondent shall cooperate with the Board's inspection program and with the Board's
14 monitoring and investigation of Respondent's compliance with the terms and conditions of her
15 probation. Failure to cooperate shall be considered a violation of probation.

16 **6. Notice to Employers**

17 During the period of probation, Respondent shall notify all present and prospective
18 employers of the decision in case number 5896 and the terms, conditions and restrictions imposed
19 on Respondent by the decision, as follows:

20 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
21 Respondent undertaking any new employment, Respondent shall cause her direct supervisor,
22 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
23 tenure of employment) and owner to report to the Board in writing acknowledging that the listed
24 individual(s) has/have read the decision in case number 5896 and the terms and conditions
25 imposed thereby. It shall be Respondent's responsibility to ensure that her employer(s) and/or
26 supervisor(s) submit timely acknowledgement(s) to the Board.

27 If Respondent works for or is employed by or through a pharmacy employment service,
28 Respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy

1 of the terms and conditions of the decision in case number 5896 in advance of the Respondent
2 commencing work at each pharmacy. A record of this notification must be provided to the Board
3 upon request.

4 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
5 (15) days of Respondent undertaking any new employment by or through a pharmacy
6 employment service, Respondent shall cause her direct supervisor with the pharmacy
7 employment service to report to the Board in writing acknowledging that she has read the
8 decision in case number 5896 and the terms and conditions imposed thereby. It shall be
9 Respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely
10 acknowledgment(s) to the Board.

11 Failure to timely notify present or prospective employer(s) or to cause that/those
12 employer(s) to submit timely acknowledgements to the Board shall be considered a violation of
13 probation.

14 "Employment" within the meaning of this provision shall include any full-time, part-time,
15 temporary or relief service or pharmacy management service as a pharmacy technician or in any
16 position for which a pharmacy technician license is a requirement or criterion for employment,
17 whether the Respondent is considered an employee, independent contractor or volunteer.

18 7. Reimbursement of Board Costs

19 As a condition precedent to successful completion of probation, Respondent shall pay to the
20 Board its costs of investigation and prosecution in the amount of \$5,242.87. Respondent shall
21 make said payments according to a payment plan to be determined by the Board. There shall be
22 no deviation from this schedule absent prior written approval by the Board or its designee.
23 Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

24 The filing of bankruptcy by Respondent shall not relieve Respondent of her responsibility
25 to reimburse the Board its costs of investigation and prosecution.

26 8. Probation Monitoring Costs

27 Respondent shall pay any costs associated with probation monitoring as determined by the
28 Board each and every year of probation. Such costs shall be payable to the Board on a schedule

1 as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed
2 shall be considered a violation of probation.

3 **9. Status of License**

4 Respondent shall, at all times while on probation, maintain an active, current pharmacy
5 technician license with the Board, including any period during which suspension or probation is
6 tolled. Failure to maintain an active, current license shall be considered a violation of probation.

7 If Respondent's pharmacy technician license expires or is cancelled by operation of law or
8 otherwise at any time during the period of probation, including any extensions thereof due to
9 tolling or otherwise, upon renewal or reapplication Respondent's license shall be subject to all
10 terms and conditions of this probation not previously satisfied.

11 **10. License Surrender While on Probation/Suspension**

12 Following the effective date of this decision, should Respondent cease work due to
13 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
14 Respondent may tender her pharmacy technician license to the Board for surrender. The Board or
15 its designee shall have the discretion whether to grant the request for surrender or take any other
16 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the
17 license, Respondent will no longer be subject to the terms and conditions of probation. This
18 surrender constitutes a record of discipline and shall become a part of the Respondent's license
19 history with the Board.

20 Upon acceptance of the surrender, Respondent shall relinquish her pharmacy technician
21 license to the Board within ten (10) days of notification by the Board that the surrender is
22 accepted. Respondent may not reapply for any license, permit, or registration from the Board for
23 three (3) years from the effective date of the surrender. Respondent shall meet all requirements
24 applicable to the license sought as of the date the application for that license is submitted to the
25 Board.

26 **11. Notification of a Change in Name, Residence Address, Mailing Address or**
27 **Employment**

28 Respondent shall notify the Board in writing within ten (10) days of any change of

1 employment. Said notification shall include the reasons for leaving, the address of the new
2 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
3 shall further notify the Board in writing within ten (10) days of a change in name, residence
4 address and mailing address, or phone number.

5 Failure to timely notify the Board of any change in employer(s), name(s), address(es), or
6 phone number(s) shall be considered a violation of probation.

7 12. Tolling of Probation

8 Except during periods of suspension, Respondent shall, at all times while on probation, be
9 employed as a pharmacy technician in California for a minimum of 40 hours per calendar month.
10 Any month during which this minimum is not met shall toll the period of probation, i.e., the
11 period of probation shall be extended by one month for each month during which this minimum is
12 not met. During any such period of tolling of probation, Respondent must nonetheless comply
13 with all terms and conditions of probation.

14 Should Respondent, regardless of residency, for any reason (including vacation) cease
15 working as a pharmacy technician for a minimum of 40 hours per calendar month in California,
16 Respondent must notify the Board in writing within ten (10) days of cessation of work and must
17 further notify the Board in writing within ten (10) days of the resumption of the work. Any
18 failure to provide such notification(s) shall be considered a violation of probation.

19 It is a violation of probation for Respondent's probation to remain tolled pursuant to the
20 provisions of this condition for a total period, counting consecutive and non-consecutive months,
21 exceeding thirty-six (36) months.

22 "Cessation of work" means calendar month during which Respondent is not working for at
23 least 40 hours as a pharmacy technician, as defined in Business and Professions Code section
24 4115. "Resumption of work" means any calendar month during which Respondent is working as
25 a pharmacy technician for at least 40 hours as a pharmacy technician as defined by Business and
26 Professions Code section 4115.

27 13. Violation of Probation

28 If a Respondent has not complied with any term or condition of probation, the Board shall

1 have continuing jurisdiction over Respondent, and probation shall automatically be extended,
2 until all terms and conditions have been satisfied or the Board has taken other action as deemed
3 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
4 to impose the penalty that was stayed.

5 If Respondent violates probation in any respect, the Board, after giving Respondent notice
6 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
7 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
8 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
9 a petition to revoke probation or an accusation is filed against Respondent during probation, the
10 Board shall have continuing jurisdiction, and the period of probation shall be automatically
11 extended until the petition to revoke probation or accusation is heard and decided.

12 14. **Completion of Probation**

13 Upon written notice by the board, indicating successful completion of probation,
14 Respondent's pharmacy technician license will be fully restored.

15 15. **Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

16 Within thirty (30) days of the effective date of this decision, Respondent shall begin regular
17 attendance at a recognized and established substance abuse recovery support group in California,
18 (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the Board
19 or its designee. Respondent must attend at least one group meeting per week unless otherwise
20 directed by the Board or its designee. Respondent shall continue regular attendance and submit
21 signed and dated documentation confirming attendance with each quarterly report for the duration
22 of probation. Failure to attend or submit documentation thereof shall be considered a violation of
23 probation.

24 16. **Random Drug Screening**

25 Respondent, at her own expense, shall participate in random testing, including but not
26 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
27 screening program as directed by the Board or its designee. Respondent may be required to
28 participate in testing for the entire probation period and the frequency of testing will be

1 determined by the Board or its designee. At all times Respondent shall fully cooperate with the
2 Board or its designee, and shall, when directed, submit to such tests and samples for the detection
3 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or
4 its designee may direct. Failure to timely submit to testing as directed shall be considered a
5 violation of probation. Upon request of the Board or its designee, Respondent shall provide
6 documentation from a licensed practitioner that the prescription for a detected drug was
7 legitimately issued and is a necessary part of the treatment of the Respondent. Failure to timely
8 provide such documentation shall be considered a violation of probation. Any confirmed positive
9 test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a
10 documented medical treatment shall be considered a violation of probation and shall result in the
11 automatic suspension of work by Respondent. Respondent may not resume work as a pharmacy
12 technician until notified by the Board in writing.

13 During suspension, Respondent shall not enter any pharmacy area or any portion of or any
14 other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other
15 distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and
16 devices or controlled substances are maintained. Respondent shall not do any act involving drug
17 selection, selection of stock, manufacturing, compounding or dispensing; nor shall Respondent
18 manage, administer, or assist any licensee of the Board. Respondent shall not have access to or
19 control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled
20 substances. Respondent shall not resume work until notified by the Board.

21 Respondent shall not direct, control or perform any aspect of the practice of pharmacy.
22 Subject to the above restrictions, Respondent may continue to own or hold an interest in any
23 licensed premises in which she holds an interest at the time this decision becomes effective unless
24 otherwise specified in this order.

25 Failure to comply with this suspension shall be considered a violation of probation.

26 **17. Work Site Monitor**

27 Within ten (10) days of the effective date of this decision, Respondent shall identify a work
28 site monitor, for prior approval by the Board, who shall be responsible for supervising

1 Respondent during working hours. Respondent shall be responsible for ensuring that the work
2 site monitor reports in writing to the Board quarterly. Should the designated work site monitor
3 determine at any time during the probationary period that Respondent has not maintained
4 sobriety, she shall notify the Board immediately, either orally or in writing as directed. Should
5 Respondent change employment, a new work site monitor must be designated, for prior approval
6 by the Board, within ten (10) days of commencing new employment. Failure to identify an
7 acceptable initial or replacement work site monitor, or to ensure quarterly reports are submitted to
8 the Board, shall be considered a violation of probation.

9 **18. Notification of Departure**

10 Prior to leaving the probationary geographic area designated by the Board or its designee
11 for a period greater than twenty-four (24) hours, Respondent shall notify the Board verbally and
12 in writing of the dates of departure and return. Failure to comply with this provision shall be
13 considered a violation of probation.

14 **19. Abstain from Drugs and Alcohol Use**

15 Respondent shall completely abstain from the possession or use of alcohol, controlled
16 substances, dangerous drugs and their associated paraphernalia except when the drugs are
17 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon
18 request of the Board or its designee, Respondent shall provide documentation from the licensed
19 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the
20 treatment of the Respondent. Failure to timely provide such documentation shall be considered a
21 violation of probation. Respondent shall ensure that she is not in the same physical location as
22 individuals who are using illicit substances even if Respondent is not personally ingesting the
23 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia
24 not supported by the documentation timely provided, and/or any physical proximity to persons
25 using illicit substances, shall be considered a violation of probation.

26 **20. Tolling of Suspension**

27 During the period of suspension, Respondent shall not leave California for any period
28 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess

1 of ten (10) days during suspension shall be considered a violation of probation. Moreover, any
2 absence from California during the period of suspension exceeding ten (10) days shall toll the
3 suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days
4 Respondent is absent from California. During any such period of tolling of suspension,
5 Respondent must nonetheless comply with all terms and conditions of probation.

6 Respondent must notify the Board in writing within ten (10) days of departure, and must
7 further notify the Board in writing within ten (10) days of return. The failure to provide such
8 notification(s) shall constitute a violation of probation. Upon such departure and return,
9 Respondent shall not return to work until notified by the Board that the period of suspension has
10 been satisfactorily completed.

11 **21. Ethics Counseling**


12 Within sixty (60) calendar days of the effective date of this decision, Respondent shall
13 enroll in a counseling program in ethics, at Respondent's expense, approved in advance by the
14 Board or its designee. Respondent shall enroll and successfully complete a total of twenty-four
15 (24) sessions of ethics counseling under this provision. Failure to complete the 24 total sessions
16 within the first two years of probation is a violation of probation.

17 Respondent shall submit certifications from the counseling program on a quarterly basis to
18 the Board or its designee, confirming Respondent's attendance and participation in the counseling
19 program.

20 **ACCEPTANCE**

21 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
22 discussed it with my attorney, Joseph W. Rose. I understand the stipulation and the effect it will
23 have on my Pharmacy Technician Registration. I enter into this Stipulated Settlement and
24 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
25 Decision and Order of the Board of Pharmacy.


26
27 DATED: 04/20/17


28 SUSAN XIONG
Respondent

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I have read and fully discussed with Respondent Susan Xiong the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 4-26-17



JOSEPH W. ROSE
Attorney for Respondent

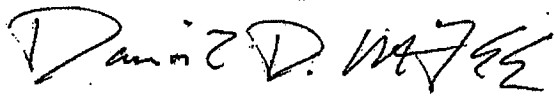
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy.

Dated: 5/4/2017

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General



DANIEL D. MCGEE
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 5896

Exhibit A

Accusation No. 5896

1 XAVIER BECERRA
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2 JANICE K. LACHMAN
Supervising Deputy Attorney General
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7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12 **SUSAN XIONG**
13 **1661 W. Kanai Avenue**
Porterville, CA 93257
14 **Pharmacy Technician Registration No. TCH**
15 **85081**
16 Respondent.

Case No. 5896

A C C U S A T I O N

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 ("Board"), Department of Consumer Affairs.
21 2. On or about August 7, 2008, the Board issued Pharmacy Technician Registration
22 Number TCH 85081 to Susan Xiong ("Respondent"). The pharmacy technician registration was
23 in full force and effect at all times relevant to the charges brought in this Accusation and will
24 expire on February 28, 2018, unless renewed.

25 **JURISDICTION**

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

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4. Code section 4300 states, in pertinent part:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

5. Code section 4300.1 states:

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

STATUTORY PROVISIONS

6. Code section 4301 states, in pertinent part:

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

....

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

....

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

....

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

3

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

9 7. Code section 4060 states, in pertinent part:

10 No person shall possess any controlled substance, except that furnished to
11 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
12 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
13 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
14 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
15 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
16 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
17 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

18 8. Health and Safety Code section 11170 states that "[n]o person shall prescribe,
19 administer, or furnish a controlled substance for himself."

20 9. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, that
21 "[n]o person shall obtain or attempt to obtain controlled substances, or procure or attempt to
22 procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
23 misrepresentation, or subterfuge . . ."

24 COST RECOVERY

25 10. Code section 125.3 provides, in pertinent part, that a Board may request the
26 administrative law judge to direct a licensee found to have committed a violation or violations of
27 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
28 enforcement of the case.

29 DRUG CLASSIFICATIONS

30 11. Phentermine 37.5 mg is a Schedule IV controlled substance as designated by Health
31 and Safety Code section 11057, subdivision (f)(4), and a dangerous drug within the meaning of
32 Code section 4022 in that it can only be obtained by a valid prescription. Phentermine 37.5 mg is
33 indicated for weight loss. "Adipex-P" is a brand of phentermine 37.5 mg.

34 ///

1 12. Phentermine 15 mg is a Schedule IV controlled substance as designated by Health
2 and Safety Code section 11057, subdivision (f)(4), and a dangerous drug within the meaning of
3 Code section 4022 in that it can only be obtained by a valid prescription. Phentermine 15 mg is
4 indicated for weight loss. "Tonamin" is a brand of phentermine 15 mg.

5 **BACKGROUND**

6 13. At all times relevant to the charges brought in the Accusation, Respondent was
7 employed as a pharmacy technician at CVS Pharmacy #35 located on N. Westwood Street in
8 Porterville, California ("pharmacy").

9 14. On or about June 26, 2015, the Board received a letter from S. R., Lead Coordinator
10 of the Drug Loss Program Team for CVS Caremark, indicating that they had been notified by the
11 pharmacy of a loss or theft of controlled substances. S. R. provided the Board with a copy of a
12 DEA 106 form that had been submitted by the pharmacy. The pharmacy reported a theft or loss
13 of 1,605 tablets of the controlled substance alprazolam 1 mg and indicated that the theft/loss had
14 occurred on May 27, 2015.

15 15. On or about July 23, 2015, the Board received an email from K. D. of CVS Health.
16 K. D. stated that during their investigation of the above loss/theft, they interviewed Respondent
17 and another employee¹, who both admitted to the theft of phentermine from the pharmacy. K. D.
18 provided the Board with copies of various documents, including a DEA 106 form that had been
19 submitted by the pharmacy showing a theft/loss of 307 tablets of phentermine 37.5 mg and 7
20 tablets of phentermine 15 mg on July 7, 2015, and a statement from Respondent dated July 7,
21 2015. Respondent admitted in her statement that she took a total of approximately 160 tablets of
22 phentermine 37.5 mg "once about 4 years ago and once 2 years ago", that she placed the
23 phentermine in her pocket, and that she took the medication for self-use to lose weight.

24 16. On or about December 29, 2015, Board Inspector D. P. received a copy of a report
25 from the Porterville Police Department. The report showed that on July 7, 2015, Officer V. was
26 dispatched to the pharmacy regarding an embezzlement. Officer V. was advised by the reporting

27 _____
28 ¹ The other employee admitted to diverting a total of 100 tablets of phentermine.

1 party that Respondent admitted to taking about 160 phentermine pills from the pharmacy. Later,
2 Officer V. went to Respondent's residence. Respondent admitted to Officer V. that she took a
3 bottle and a half of weight loss pills (phentermine) for her own personal use and that she had
4 placed them in her pocket.

5 **FIRST CAUSE FOR DISCIPLINE**

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

7 17. Respondent is subject to disciplinary action pursuant to Code section 4301,
8 subdivision (f), for unprofessional conduct, in that while on duty as a pharmacy technician at
9 CVS Pharmacy #35, Respondent committed acts involving moral turpitude, dishonesty, fraud,
10 deceit, or corruption, as follows: Respondent stole or diverted a total of approximately 160
11 tablets of phentermine 37.5 mg from the pharmacy for self-administration.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Self-Administration of a Controlled Substance)**

14 18. Respondent is subject to disciplinary action pursuant to Code section 4301,
15 subdivision (h), for unprofessional conduct, in that while employed and/or on duty as a pharmacy
16 technician at CVS Pharmacy #35, Respondent self-administered the controlled substance
17 phentermine without a valid or lawful prescription for the medication and/or used phentermine to
18 an extent or in a manner dangerous or injurious to herself, others and/or the public.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Violations of State Laws Regulating Controlled Substances)**

21 19. Respondent is subject to disciplinary action pursuant to Code section 4301,
22 subdivision (j), for unprofessional conduct, in that while on duty as a pharmacy technician at CVS
23 Pharmacy #35, Respondent did the following:

24 a. Respondent obtained the controlled substance phentermine by fraud, deceit,
25 misrepresentation, or subterfuge, in violation of Health and Safety Code section 11173,
26 subdivision (a).

27 b. Respondent possessed the controlled substance phentermine without a valid or lawful
28 prescription for the medication, in violation of Code section 4060.

1 FOURTH CAUSE FOR DENIAL

2 (Violations of the Pharmacy Law)

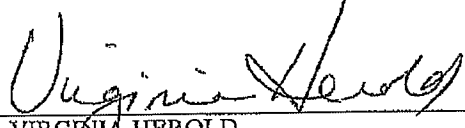
3 20. Respondent is subject to disciplinary action pursuant to Code section 4301,
4 subdivision (o), for unprofessional conduct, in that while employed and/or on duty as a pharmacy
5 technician at CVS Pharmacy #35, Respondent violated or attempted to violate, directly or
6 indirectly, a provision or term of the Pharmacy Law (Bus. & Prof. Code § 4300, et seq.),
7 specifically, Code section 4060.

8 PRAYER

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

- 11 1. Revoking or suspending Pharmacy Technician Registration Number TCH 85081,
12 issued to Susan Xiong;
- 13 2. Ordering Susan Xiong to pay the Board of Pharmacy the reasonable costs of the
14 investigation and enforcement of this case, pursuant to Business and Professions Code section
15 125.3; and
- 16 3. Taking such other and further action as deemed necessary and proper.

17
18 DATED: 1/27/17


19 VIRGINIA HEROLD
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant

25
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27 SA2016102858