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

11
12 In the Matter of the Accusation Against:

Case No. 3491

13 **LONG NGOC DOAN**
14 **819 Polaris Dr.**
Tustin, CA 92782

A C C U S A T I O N

15 **Pharmacist License No. RPH 50777**

16 Respondent.
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19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about April 1, 1999, the Board of Pharmacy issued Pharmacist License Number
24 RPH 50777 to Long Ngoc Doan (Respondent). The Pharmacist License was in full force and
25 effect at all times relevant to the charges brought herein and will expire on October 31, 2010,
26 unless renewed.

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JURISDICTION

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

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

5. Section 4300 of the Code states:

(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.

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STATUTORY PROVISIONS

6. Section 4301 of the Code states:

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

.....

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of

relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

.....
(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.

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

.....
(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. 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.

.....
7. Section 4060 of the Code states:

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

1 Section 4052. This section shall not apply to the possession of any controlled
2 substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician,
3 podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
4 nurse-midwife, nurse practitioner, or physician assistant, when in stock in
5 containers correctly labeled with the name and address of the supplier or
6 producer.

7 Nothing in this section authorizes a certified nurse-midwife, a nurse
8 practitioner, a physician assistant, or a naturopathic doctor, to order his or her
9 own stock of dangerous drugs and devices.

10 8. Section 4022 of the Code states

11 Dangerous drug" or "dangerous device" means any drug or device unsafe
12 for self-use in humans or animals, and includes the following:

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

15 (b) Any device that bears the statement: "Caution: federal law restricts
16 this device to sale by or on the order of a _____," "Rx only," or words of
17 similar import, the blank to be filled in with the designation of the practitioner
18 licensed to use or order use of the device.

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

21 9. Section 490 of the Code states:

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

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

(c) A conviction within the meaning of this section means a plea or
verdict of guilty or a conviction following a plea of nolo contendere. Any
action that a board is permitted to take following the establishment of a
conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this
section has been made unclear by the holding in *Petropoulos v. Department of*

1 *Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has
2 placed a significant number of statutes and regulations in question, resulting in
3 potential harm to the consumers of California from licensees who have been
4 convicted of crimes. Therefore, the Legislature finds and declares that this
5 section establishes an independent basis for a board to impose discipline upon a
6 licensee, and that the amendments to this section made by Senate Bill 797 of
7 the 2007 -08 Regular Session do not constitute a change to, but rather are
8 declaratory of, existing law.

9
10 10. Section 492 of the Code states:

11 Notwithstanding any other provision of law, successful completion of any
12 diversion program under the Penal Code, or successful completion of an
13 alcohol and drug problem assessment program under Article 5 (commencing
14 with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall
15 not prohibit any agency established under Division 2 ([Healing Arts]
16 commencing with Section 500) of this code, or any initiative act referred to in
17 that division, from taking disciplinary action against a licensee or from denying
18 a license for professional misconduct, notwithstanding that evidence of that
19 misconduct may be recorded in a record pertaining to an arrest.

20 This section shall not be construed to apply to any drug diversion
21 program operated by any agency established under Division 2 (commencing
22 with Section 500) of this code, or any initiative act referred to in that division.

23 REGULATORY PROVISIONS

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

25 For the purpose of denial, suspension, or revocation of a personal or
26 facility license pursuant to Division 1.5 (commencing with Section 475) of the
27 Business and Professions Code, a crime or act shall be considered substantially
28 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 his license or registration in a
manner consistent with the public health, safety, or welfare.

12. California Code of Regulations, title 16, section 1769, states, in pertinent part:

.....
(b) When considering the suspension or revocation of a facility or a
personal license on the ground that the licensee or the registrant has been
convicted of a crime, the board, in evaluating the rehabilitation of such person
and his present eligibility for a license will consider the following criteria:

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

1 (2) Total criminal record.

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

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

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

6 COST RECOVERY

7 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
8 administrative law judge to direct a licentiate found to have committed a violation or violations of
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
10 enforcement of the case.

11 DRUGS

12 14. Hydroxyzine, is a dangerous drug pursuant to Business and Professions Code
13 section 4022.

14 15. Naproxen sodium, is a dangerous drug pursuant to Business and Professions Code
15 section 4022.

16 16. Tramadol is a centrally acting analgesic, and is a dangerous drug pursuant to
17 Business and Professions Code section 4022.

18 17. Diphenoxylate/Atropine is an opioid and Schedule V controlled substance pursuant
19 to Health and Safety Code section 11058 (c) (4).

20 FACTS

21 18. In 2008, Respondent was employed as a pharmacist, graveyard shift, at Walgreens
22 Pharmacy #5972 in Garden Grove California. Surveillance cameras were installed in the
23 pharmacy on or about March 31, 2008. On April 5, 2008, the surveillance cameras recorded
24 Respondent as he removed an unknown quantity of Naproxen from a stock bottle and placed the
25 tablets into the pocket of his pharmacist smock. On April 7, 2008, the surveillance cameras
26 recorded Respondent as he took two stock bottles of Hydroxyzine off of the pharmacy shelf,
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1 poured some of the contents of one container into his hand, and then poured it from his hand into
2 the other container. Respondent placed one of the stock bottles of Hydroxyzine into a personally
3 owned bag that he often brings to work, left the building with the bag, and returned to the
4 pharmacy a few minutes later without the bag. On April 7, 2008, the surveillance cameras
5 recorded Respondent as he removed a cartridge containing an unknown quantity of Tramadol
6 from the pharmacy stock shelf, placed the cartridge into a plastic bag, and then walked away out
7 of sight. On April 12, 2008, the surveillance camera recorded Respondent as he removed an
8 unknown quantity of Diphenoxylate/ Atropine from its pharmacy stock container and never
9 returned anything back into the container.

10 19. On April 17, 2008, Respondent admitted to the pharmacy's loss prevention officer
11 that he had taken some prescription medications from the pharmacy for self-use, including two
12 tablets of Diphenoxylate/Atropine, one or two tablets of Hydroxyzine, and one or two tablets of
13 Naproxyn. Respondent also admitted that he did not have a prescription for any of the
14 medications.

15 20. On April 17, 2008, the pharmacy completed an Item Movement Report which showed
16 discrepancies in the expected on-hand quantities and the actual quantities in stock regarding the
17 following four drugs: Diephenoxylate/Atropine (14 tablets less in stock than expected), Tramadol
18 50 mg (99 tablets less in stock than expected), Hydroxyzine Pamoate 25 mg (13 capsules less in
19 stock than expected), and Naproxen 500 mg (241 tablets less in stock than expected). The
20 pharmacy then completed a DEA Report of Theft or Loss of Controlled Substances, and notified
21 the local police department.

22 21. On April 17, 2008, a Garden Grove police Officer arrived at the Walgreens Pharmacy
23 #5927 and escorted Respondent out of the store. The police officer completed a crime incident
24 report and forwarded it to the Orange County District Attorney's Office for review.

25 22. On September 5, 2008, in an Orange County Superior Court case entitled *People of*
26 *the State of California v Long Ngoc Doan* , case number 08WM08889, the Orange County
27 District Attorney filed the following criminal charges against Respondent: two separate counts of
28 violating Penal Code sections 666, 484 (a), and 488 (petty theft with prior theft conviction), on

1 April 7, 2008, and on April 12, 2008, respectively; and, two separate counts of violating Business
2 and Professions Code section 4060 (unlawful possession of controlled substance), on April 7,
3 2008, and on April 12, 2008, respectively. On December 23, 2008, Respondent was convicted on
4 his plea of guilty of violating Penal Code section 666, 484 (a), and 488 (petty theft with prior
5 theft conviction) on April 7, 2008, and all other pending criminal charges were dismissed.

6 23. On December 23, 2008, the court sentenced Respondent to three years informal
7 probation under several terms and conditions, including the following: violate no law, submit to
8 warrantless searches, use true name and date of birth at all times, disclose probation to law
9 enforcement, eighty (80) hours community services, and pay various fines and fess. Respondent
10 is scheduled to complete his probation on December 22, 2011.

11 FIRST CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct – Dishonesty)

13 24. Respondent's pharmacist license is subject to disciplinary action under Code section
14 4301, subdivision (f) in that Respondent engaged in conduct involving moral turpitude,
15 dishonesty, fraud, deceit, or corruption in that on dates unknown and known, including April 5, 7,
16 and 12, 2008, while working as a pharmacist at Walgreens Pharmacy #05972, Respondent stole
17 unknown quantities of the dangerous drugs Hydroxyzine Pamoate, Naproxen, and Tramadol, and
18 stole unknown quantities of the controlled substance Diphenoxylate/Atropinethat, for self-use
19 without a prescription, as described above at paragraphs 18 through 23, which are incorporated
20 herein by reference.

21 SECOND CAUSE FOR DISCIPLINE

22 (Furnishing a Dangerous Drug Without a Prescription)

23 25. Respondent's pharmacist license is subject to disciplinary action under Business and
24 Professions Code section 4301 (j) for violation of section 4059 in that on dates known and
25 unknown, Respondent furnished unknown quantities of the dangerous drugs Hydroxizine
26 Pamoate, and Naproxen to himself for self-use when he did not have a prescription for said
27 dangerous drugs, as described above at paragraphs 18 through 23, which are incorporated herein
28 by reference.

1 THIRD CAUSE FOR DISCIPLINE

2 (Furnishing a Controlled Substance Without a Prescription)

3 26. Respondent's pharmacist license is subject to disciplinary action under Business and
4 Professions Code section 4301 (j) for violation of section 4060 in that on dates known and
5 unknown, Respondent furnished unknown quantities of the controlled substance
6 Diphenoxylate/Atropine to himself for self-use when he did not have a prescription for said
7 controlled substance, as described above at paragraphs 18 through 23, which are incorporated
8 herein by reference.

9 FOURTH CAUSE FOR DISCIPLINE

10 (Unlawful Possessions of Controlled Substance)

11 27. Respondent's pharmacist license is subject to disciplinary action under Business
12 and Professions Code section 4301 (j) for violation of section 4060 and health and Safety Code
13 section 11170, in that on dates known and unknown Respondent unlawfully possessed the
14 controlled substance Diphenoxylate/Atropine, without a valid prescription, as described above at
15 paragraphs 18 through 23, which are incorporated herein by reference.

16 FIFTH CAUSE FOR DISCIPLINE

17 (December 23, 2008, Conviction for Theft of Drugs from Pharmacy on April 7, 2008)

18 28. Respondent's pharmacist license is subject to disciplinary action under Code sections
19 490 and 4301, subdivision (l), in that on December 23, 2008, Respondent was convicted of
20 violating Penal Code sections 666, 484 (a), and 488 (theft with prior theft conviction), a
21 misdemeanor, as described above in paragraphs 18 through 23 which are incorporated herein by
22 reference.

23 29. Respondent's prior theft conviction occurred on September 9, 1994, in an Orange
24 County Superior Court case entitled *People of the State of California v Long Ngoc Doan*, wherein
25 Respondent was convicted on his plea of guilty of violating Penal Code section 288 (theft). The
26 facts and circumstances underlying the conviction are that Respondent, while employed at a
27 department store, stole a comforter set and three shirts from his employer on December 7, 1993.

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1 Respondent was sentenced to three years probation, eighty (80) hours of community service, and
2 fines. Respondent successfully completed his probation.

3 PRAYER

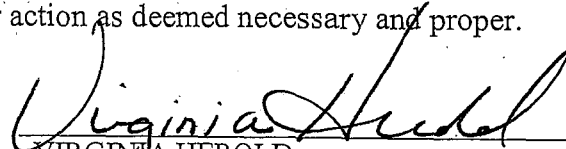
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Pharmacy issue a decision:

6 1. Revoking or suspending Pharmacist License Number RPH 50777, issued to Long
7 Ngoc Doan Long Ngoc Doan.

8 2. Ordering Long Ngoc Doan to pay the Board of Pharmacy the reasonable costs of the
9 investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3;

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

12 DATED: 1/4/10


13 VIRGINIA HEROLD
14 Executive Officer
15 Board of Pharmacy
16 Department of Consumer Affairs
17 State of California
18 Complainant

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