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

11 In the Matter of the Accusation Against:

Case No. 4185

12 **THUY VO-NGUYEN**
13 **15111 Bushard Street #9**
14 **Westminster, CA 92683**

A C C U S A T I O N

15 **Pharmacist License No. RPH 60854**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1.e 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.e On or about March 28, 2008, the Board of Pharmacy issued Pharmacist Licensee
22 Number RPH 60854 to Thuy Vo-Nguyen (Respondent). The Pharmacist License was in full
23 force and effect at all times relevant to the charges brought herein and will expire on August 31,
24 2013, unless renewed.

25 **JURISDICTION**

26 3.e 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 4300, subdivision (a) of the Code states that "Every license issued may be
2 suspended or revoked."

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

7 **STATUTORY PROVISIONS**

8 6. Section 4301 of the Code states:

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

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

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

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

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

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(q) Engaging in any conduct that subverts or attempts to subvert an
investigation of the board.

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7. Section 4022 of the Code states:

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

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

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

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

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

14 9. Section 4060 of the Code states, in pertinent part, that "No person shall possess any
15 controlled substance, except that furnished to a person upon the prescription of a physician,
16 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor."

17 10. Section 4324 of the Code states:

18 (a) Every person who signs the name of another, or of a fictitious person, or
19 falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine,
20 any prescription for any drugs is guilty of forgery and upon conviction thereof shall
21 be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal
22 Code, or by imprisonment in a county jail for not more than one year.

23 (b) Every person who has in his or her possession any drugs secured by a
24 forged prescription shall be punished by imprisonment pursuant to subdivision (h) of
25 Section 1170 of the Penal Code, or by imprisonment in the county jail for not more
26 than one year.

27 11. Section 11170 of the Health and Safety Code states that "No person shall prescribe,
28 administer, or furnish a controlled substance for himself."

12. Section 11173 of the Health and Safety Code states:

(a) 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.

(b) No person shall make a false statement in any prescription, order, report,
or record, required by this division.

1 (c) No person shall, for the purpose of obtaining controlled substances, falsely
2 assume the title of, or represent himself to be, a manufacturer, wholesaler,
3 pharmacist, physician, dentist, veterinarian, registered nurse, physician's assistant, or
4 other authorized person.

(d) No person shall affix any false or forged label to a package or receptacle
containing controlled substances.

5 13. United States Code, title 21, section 843 states:

6 (a) Unlawful acts

7 It shall be unlawful for any person knowingly or intentionally --

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9 (3) to acquire or obtain possession of a controlled substance by
10 misrepresentation, fraud, forgery, deception, or subterfuge;

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12 REGULATORY PROVISIONS

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

14 For the purpose of denial, suspension, or revocation of a personal or facility
15 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
16 Professions Code, a crime or act shall be considered substantially related to the
17 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.

18 COST RECOVERY

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

23 DRUGS

24 16. Temazepam, sold commercially as Restoril, is a Schedule IV controlled substance as
25 designated by Health and Safety Code section 11057, subdivision (d)(29), and is a dangerous
26 drug pursuant to Business and Professions Code section 4022.

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1 17. Triazolam, sold commercially as Halcion, is a Schedule IV controlled substance
2 pursuant to Health and Safety Code section 11057, subdivision (d)(30), and is a dangerous drug
3 pursuant to Business and Professions Code section 4022.

4 18. Olanzapine, sold commercially as Zyprexa, is a dangerous drug pursuant to Business
5 and Professions Code section 4022.

6 **FACTUAL ALLEGATIONS**

7 19. Respondent began employment as a pharmacist with a Visalia, California Wal-Mart
8 on April 5, 2010. In a letter to the Board received on April 26, 2011, the pharmacist in charge
9 (PIC) of the Wal-Mart advised the Board that Respondent's employment had been terminated for
10 "gross misconduct/integrity" on March 29, 2011. Based on an internal investigation conducted
11 by Wal-Mart, it was determined that Respondent forged "phoned-in" prescriptions and
12 fraudulently obtained controlled substances over a five-month period. The circumstances are as
13 follows:

14 20. On October 10, 2010, Respondent filled a "phoned-in" prescription for herself for 30
15 tablets of Restoril 30 mg. (It is Wal-Mart policy that pharmacists are not permitted to fill their
16 own prescriptions.) Respondent prepared a Telephone Prescription form and entered the name of
17 a Visalia physician as the authorizing prescriber. Respondent obtained four refills of the
18 prescription on November 7, 2010, December 10, 2010, January 8, 2011, and February 21, 2011.
19 Respondent diverted a total 150 tablets of Restoril 30 mg.

20 21. On November 7, 2010, Respondent filled a phoned-in prescription for herself for 30
21 tablets of Halcion .25 mg. Respondent prepared a Telephone Prescription form and used the
22 name of the same Visalia physician to authorize the prescription. Respondent refilled the
23 prescription on December 18, 2010. Respondent diverted a total 60 tablets of Halcion .25 mg.

24 22. On March 25, 2011, Respondent prepared a Telephone Prescription form for 30
25 tablets of Zyprexa 20 mg., and 60 tablets of Halcion .25 mg. and made an entry in the pharmacy
26 computer for the order. A pharmacy technician who intercepted the order did not feel the
27 prescription made sense and refused to fill it. The pharmacy technician notified the PIC of the

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1 discrepancy. The PIC attempted to locate the suspect prescriptions, but found that the original
2 prescription copy was missing and the computer entry had been deleted.

3 23. On March 28, 2011, the PIC spoke to the doctor whose name Respondent used to
4 authorize her prescriptions. In a letter dated March 29, 2011, the doctor confirmed that he had
5 never written or approved any prescriptions for Respondent, and that she was never a patient at
6 his clinic.

7 24. On March 29, 2011, Respondent met with Wal-Mart management and she was
8 questioned about the prescriptions. Respondent admitted she forged prescriptions to obtain
9 controlled substances for her own use. Respondent also admitted that she had never been a
10 patient of the physician whose name she used to authorize the prescriptions.

11 25. An investigator from the Board contacted Respondent by telephone on May 17, 2011,
12 identified himself, and explained that he was conducting the interview as part of his investigation.
13 Respondent denied doing anything illegal. Respondent stated that the prescriptions for herself
14 were all authorized by the Visalia physician and that she was his legitimate patient. Respondent
15 stated that she had been terminated based on false information. In a subsequent interview,
16 Respondent recanted her earlier statement and told the Board investigator that she had created
17 fraudulent prescriptions in order to obtain the controlled substances for sleep and stress.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct - Commission of Acts Involving
20 Dishonesty, Fraud & Deceit)**

21 26. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the
22 Code in that on or about and between October 10, 2010 and March 25, 2011, Respondent
23 diverted, or attempted to divert controlled substances and dangerous drugs from her employer
24 using fraud, deceit, and dishonesty, as detailed in paragraphs 19-25, above.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Unprofessional Conduct – Knowingly Making a False Document)**

27 27. Respondent is subject to disciplinary action under section 4301, subdivision (g) of the
28 Code in that on or about and between October 10, 2010 and March 25, 2011, Respondent

1 knowingly made and signed fraudulent documents and made computer entries that she knew to be
2 false in order to create prescriptions for controlled substances and dangerous drugs, as detailed in
3 paragraphs 19-25, above.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct - Violation of California & Federal Statutes Regulating**
6 **Controlled Substances & Dangerous Drugs)**

7 28. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
8 Code in that on or about and between October 10, 2010 and March 25, 2011, Respondent
9 knowingly violated Business and Professions Code sections 4059, 4060, and 4324; Health and
10 Safety Code sections 11170 and 11173; and United States Code, title 21, section 843, subdivision
11 (a)(3) regulating controlled substances and dangerous drugs, as detailed in paragraphs 19-25,
12 above.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct – Attempting to Subvert an Investigation)**

15 29. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the
16 Code in that on or about May 17, 2011, Respondent engaged in conduct that attempted to subvert
17 an investigation of the Board, as detailed in paragraph 25, above.

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PRAYER

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

1. Revoking or suspending Pharmacist License Number RPH 60854, issued to Thuy Vo-Nguyen;
2. Ordering Thuy Vo-Nguyen 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;
3. Taking such other and further action as deemed necessary and proper.

DATED: 1/2/12 Virginia Herold

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

SD2011801276