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

In the Matter of the Accusation Against:

VYKHANH THI NGUYEN
746 Woodhams Road
Santa Clara, CA 95051
Pharmacist License No. RPH 64465

Respondent.

Complainant alleges:

PARTIES
1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
2. On or about August 23, 2010, the Board of Pharmacy issued Pharmacist License No. RPH 64465 to Vykhanh Thi Nguyen (Respondent). The License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2014, unless renewed.

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

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

6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or suspension of a Board-issued license, 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.

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

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

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

   (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter 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.

8. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous drug or dangerous device except upon the prescription of an authorized prescriber.
9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished upon a valid prescription/drug order.

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

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

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

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

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

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

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

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

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

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

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

COST RECOVERY

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

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

21. Section 4021 of the Code states:

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

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

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

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

...(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.'
23. **Dilaudid** is a brand name for **hydromorphone**, a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(1)(J) and a dangerous drug as designated by Business and Professions Code section 4022. It is a narcotic drug.

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

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

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

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

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

**FACTUAL BACKGROUND**

29. From on or about September 15, 2011 to on or about October 19, 2012, Respondent was employed as a pharmacist at a Ralph's Pharmacy (PHY 46849) located in Costa Mesa, CA, where by virtue of her employment she had access to controlled substances and dangerous drugs, and to the means for entering prescriptions and refills into the data system, and dispensing same. During her employment, Respondent used her access to divert/steal controlled substances, and/or to aid/abet others in doing so, and/or to create/ dispense unauthorized prescriptions or refills.
30. The exact number of instances of diversion/theft, aiding/abetting of diversion/theft, and/or creation/dispensing of unauthorized prescriptions refills by Respondent, and the full quantity of controlled substances diverted/stolen by Respondent, or dispensed pursuant to unauthorized prescriptions or refills, are not known, but in the course of investigations conducted by the pharmacy, by the Costa Mesa Police Department, and by the Board of Pharmacy, the following were among the observations, admissions, and revelations reported:

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

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

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

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

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

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

<table>
<thead>
<tr>
<th>Parent</th>
<th>Prescription No.</th>
<th>Drug Dispensed</th>
<th>Quantity</th>
<th>Date Dispensed</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.D.</td>
<td>2303203</td>
<td>Oxycodone 30mg</td>
<td>150</td>
<td>07/30/2012</td>
</tr>
<tr>
<td>A.D.</td>
<td>4509282</td>
<td>Alprazolam 2mg</td>
<td>60</td>
<td>07/30/2012</td>
</tr>
<tr>
<td>A.D.</td>
<td>4509281</td>
<td>Hydrocodone/APAP 10/325</td>
<td>120</td>
<td>07/30/2012</td>
</tr>
<tr>
<td>P.K.</td>
<td>4509581</td>
<td>Hydrocodone/APAP 10/325</td>
<td>120</td>
<td>09/02/2012</td>
</tr>
<tr>
<td>P.K.</td>
<td>2303314</td>
<td>Oxycodone 30mg</td>
<td>240</td>
<td>09/02/2012</td>
</tr>
<tr>
<td>P.K.</td>
<td>4509582</td>
<td>Alprazolam 2mg</td>
<td>60</td>
<td>09/02/2012</td>
</tr>
<tr>
<td>R.W.</td>
<td>4509589</td>
<td>Hydrocodone/APAP 10/325</td>
<td>150</td>
<td>09/04/2012</td>
</tr>
<tr>
<td>R.W.</td>
<td>4509590</td>
<td>Alprazolam 2mg</td>
<td>60</td>
<td>09/04/2012</td>
</tr>
<tr>
<td>A.D.</td>
<td>2303317</td>
<td>Hydromorphone 8mg</td>
<td>120</td>
<td>09/04/2012</td>
</tr>
<tr>
<td>A.D.</td>
<td>2303319</td>
<td>Methadone 10mg</td>
<td>230</td>
<td>09/04/2012</td>
</tr>
<tr>
<td>A.D.</td>
<td>2303318</td>
<td>Oxycodone 30mg</td>
<td>180</td>
<td>09/05/2012</td>
</tr>
<tr>
<td>R.W.</td>
<td>2303320</td>
<td>Oxycodone 30mg</td>
<td>180</td>
<td>09/07/2012</td>
</tr>
<tr>
<td>K.E.</td>
<td>2303385</td>
<td>Oxycodone 30mg</td>
<td>180</td>
<td>09/19/2012</td>
</tr>
<tr>
<td>K.E.</td>
<td>4509743</td>
<td>Hydrocodone/APAP 10/325</td>
<td>120</td>
<td>09/19/2012</td>
</tr>
<tr>
<td>K.E.</td>
<td>2303384</td>
<td>Hydromorphone 8mg</td>
<td>150</td>
<td>09/21/2012</td>
</tr>
</tbody>
</table>
1. On or about October 17, 2012, based on the foregoing, Respondent was arrested by
the Costa Mesa Police Department on suspicion of violating Penal Code section 459 (Burglary).
Respondent was subsequently criminally charged, in People v. Vykhanh Thi Nguyen, Case No.
13WF1064 in Orange County Superior Court, with six (6) felony counts of violating Health and
Safety Code section 11368 (Forging or Altering a Prescription). That case is still pending.

FIRST CAUSE FOR DISCIPLINE
(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

2. Respondent is subject to discipline under section 4301(f) of the Code in that
Respondent, as described in paragraphs 29 to 31 above, committed acts involving moral
turpitude, dishonesty, fraud, deceit, or corruption.
SECOND CAUSE FOR DISCIPLINE
(Creation/Signature of False Documents)

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

THIRD CAUSE FOR DISCIPLINE
(Furnishing of Controlled Substance)

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

FOURTH CAUSE FOR DISCIPLINE
(Possession of Controlled Substance)

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

FIFTH CAUSE FOR DISCIPLINE
(Making, Uttering and/or Using False or Forged Prescriptions)

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

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

37. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section(s) 11150, 11171, and/or 11175, in that Respondent, as described in paragraphs 29 to 31 above, issued prescriptions without authority to do so, prescribed, administered, or furnished controlled substances under conditions other than those authorized by the Uniform Controlled Substances Act, obtained or possessed an invalid prescription, obtained or possessed a controlled substance by means of such invalid prescription, or conspired and/or assisted in or abetted any of these acts.

SEVENTH CAUSE FOR DISCIPLINE

(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

38. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs 29 to 31 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

EIGHTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

39. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 29 to 38 above, engaged in unprofessional conduct.

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 64465, issued to Vykhanh Thi Nguyen (Respondent);

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2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 11/4/13

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