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

9  
10 In the Matter of the Accusation Against:

Case No. 4911

11 **VYKHANH THI NGUYEN**  
12 **746 Woodhams Road**  
**Santa Clara, CA 95051**

**ACCUSATION**

13 **Pharmacist License No. RPH 64465**

14 Respondent.

15 Complainant alleges:

16  
17 PARTIES

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

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24 JURISDICTION

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

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

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

6           6.     Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or  
7 suspension of a Board-issued license, the placement of a license on a retired status, or the  
8 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to  
9 commence or proceed with any investigation of, or action or disciplinary proceeding against, the  
10 licensee or to render a decision suspending or revoking the license.

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12    STATUTORY AND REGULATORY PROVISIONS

13           7.     Section 4301 of the Code provides, in pertinent part, that the Board shall take action  
14 against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but  
15 not be limited to, any of the following:

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

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

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

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

27           8.     Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous  
28 drug or dangerous device except upon the prescription of an authorized prescriber.

1           9.     Section 4060 of the Code provides, in pertinent part, that no person shall possess any  
2 controlled substance, except that furnished upon a valid prescription/drug order.

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

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

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

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

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

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

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

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

28           ///

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

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

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

11  
12 COST RECOVERY

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

16  
17 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

18 21. Section 4021 of the Code states:

19 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section  
20 11053) of Division 10 of the Health and Safety Code.”

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

22 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,  
23 except veterinary drugs that are labeled as such, and includes the following:

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

26 ...

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

1 23. **Dilaudid** is a brand name for **hydromorphone**, a Schedule II controlled substance as  
2 designated by Health and Safety Code section 11055(b)(1)(J) and a dangerous drug as designated  
3 by Business and Professions Code section 4022. It is a narcotic drug.

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

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

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

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

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

21  
22 FACTUAL BACKGROUND

23 29. From on or about September 15, 2011 to on or about October 19, 2012, Respondent  
24 was employed as a pharmacist at a Ralph's Pharmacy (PHY 46849) located in Costa Mesa, CA,  
25 where by virtue of her employment she had access to controlled substances and dangerous drugs,  
26 and to the means for entering prescriptions and refills into the data system, and dispensing same.  
27 During her employment, Respondent used her access to divert/steal controlled substances, and/or  
28 to aid/abet others in doing so, and/or to create/dispense unauthorized prescriptions or refills.

1           30. The exact number of instances of diversion/theft, aiding/abetting of diversion/theft,  
2 and/or creation/dispensing of unauthorized prescriptions refills by Respondent, and the full  
3 quantity of controlled substances diverted/stolen by Respondent, or dispensed pursuant to  
4 unauthorized prescriptions or refills, are not known, but in the course of investigations conducted  
5 by the pharmacy, by the Costa Mesa Police Department, and by the Board of Pharmacy, the  
6 following were among the observations, admissions, and revelations reported:

7           a. In or about October 2012, a customer approached Pharmacist in Charge T.P.<sup>1</sup>  
8 and another pharmacist (J.L.) at the Ralph's Pharmacy where Respondent was employed to report  
9 that Respondent was engaged in filling fraudulent prescriptions for **oxycodone** for customers.

10           b. Staff of the pharmacy then proceeded to contact the office(s) of prescriber(s) for  
11 which the pharmacy had recently filled/dispensed **oxycodone** prescriptions, and discovered that  
12 more than twenty (20) prescriptions filled/dispensed by Respondent were fraudulent, at least  
13 some of which resulted from a prescription pad that had been stolen from the prescriber(s). All of  
14 the prescriptions were filled between on or about July 26, 2012 and on or about October 8, 2012,  
15 for several patients, all of whom used the same discount card, and all of whom paid cash for their  
16 prescriptions. The prescriptions were for controlled substances including **hydromorphone**  
17 (generic **Dilaudid**), **oxycodone** (generic **Roxicodone**), **methadone**, **hydrocodone with APAP**  
18 **10/325** (generic **Norco**), **alprazolam** (generic **Xanax**), and **diazepam** (generic **Valium**).

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

27 \_\_\_\_\_  
28 <sup>1</sup> 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:

Patient	Prescription No.	Drug Dispensed	Quantity	Date Dispensed
A.D.	2303203	Oxycodone 30mg	150	07/30/2012
A.D.	4509282	Alprazolam 2mg	60	07/30/2012
A.D.	4509281	Hydrocodone/APAP 10/325	120	07/30/2012
P.K.	4509581	Hydrocodone/APAP 10/325	120	09/02/2012
P.K.	2303314	Oxycodone 30mg	240	09/02/2012
P.K.	4509582	Alprazolam 2mg	60	09/02/2012
R.W.	4509589	Hydrocodone/APAP 10/325	150	09/04/2012
R.W.	4509590	Alprazolam 2mg	60	09/04/2012
A.D.	2303317	Hydromorphone 8mg	120	09/04/2012
A.D.	2303319	Methadone 10mg	230	09/04/2012
A.D.	2303318	Oxycodone 30mg	180	09/05/2012
R.W.	2303320	Oxycodone 30mg	180	09/07/2012
K.E.	2303385	Oxycodone 30mg	180	09/19/2012
K.E.	4509743	Hydrocodone/APAP 10/325	120	09/19/2012
K.E.	2303384	Hydromorphone 8mg	150	09/21/2012

Patient	Prescription No	Drug Dispensed	Quantity	Date Dispensed
P.K.	2303314	Oxycodone 30mg	180	09/30/2012
P.K.	4509831	Hydrocodone/APAP 10/325	150	09/30/2012
P.K.	2303424	Hydromorphone 8mg	110	09/30/2012
M.L.	2303454	Oxycodone 30mg	180	10/08/2012
M.L.	4509899	Hydrocodone/APAP 10/325	120	10/08/2012
M.L.	4509900	Alprazolam 2mg	60	10/08/2012
R.W.	2303453	Oxycodone 30mg	180	10/08/2012
<b>Total Quantities Dispensed On These Prescriptions:</b>			<b>1,470 Oxycodone</b>	
			<b>240 Alprazolam</b>	
			<b>780 Hydrocodone/APAP</b>	
			<b>380 Hydromorphone</b>	
			<b>230 Methadone</b>	

31. 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. Vy Khanh 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)

32. 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.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Creation/Signature of False Documents)

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

6  
7 THIRD CAUSE FOR DISCIPLINE

8 (Furnishing of Controlled Substance)

9 34. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
10 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, as described  
11 in paragraphs 29 to 31 above, furnished to herself or another without a valid prescription, and/or  
12 conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.

13  
14 FOURTH CAUSE FOR DISCIPLINE

15 (Possession of Controlled Substance)

16 35. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
17 4060 of the Code, and/or Health and Safety Code section(s) 11350 and/or 11377, in that  
18 Respondent, as described in paragraphs 29 to 31 above, possessed, conspired to possess, and/or  
19 assisted in or abetted possession of, a controlled substance, without a prescription.

20  
21 FIFTH CAUSE FOR DISCIPLINE

22 (Making, Uttering and/or Using False or Forged Prescriptions)

23 36. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
24 4324 of the Code, and/or Health and Safety Code section(s) 11157 and/or 11368, in that  
25 Respondent, as described in paragraphs 29 to 31 above, falsely made, altered, forged, uttered,  
26 published, passed, or attempted to pass, a false, forged, fictitious or altered prescription for a  
27 (narcotic) drug, had in his possession a (narcotic) drug secured by a false, forged, fictitious or  
28 altered prescription, or conspired and/or assisted in or abetted any of these acts.

1 SIXTH CAUSE FOR DISCIPLINE

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

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

10  
11 SEVENTH CAUSE FOR DISCIPLINE

12 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

13 38. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,  
14 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs  
15 29 to 31 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a  
16 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

17  
18 EIGHTH CAUSE FOR DISCIPLINE

19 (Unprofessional Conduct)

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

22  
23 PRAYER

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

26 1. Revoking or suspending Pharmacist License Number RPH 64465, issued to Vy Khanh  
27 Thi Nguyen (Respondent);

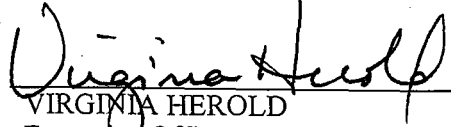
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2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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*

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