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

11 In the Matter of the Accusation Against:

Case No. 5080

12 **DENNY LOTAKOON**  
1086 W. Grand Avenue  
13 Oakland, CA 94507

**A C C U S A T I O N**

14 **Pharmacy Technician Registration No. TCH**  
77727

15 Respondent.  
16

17 Complainant alleges:  
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19 **PARTIES**

20 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.

21 2. On or about August 3, 2007, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 77727 to Denny Lotakoon (Respondent). The Pharmacy Technician  
23 Registration expired on August 31, 2013, and has not been renewed.  
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25 **JURISDICTION**

26 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  
27 Business and Professions Code (Code) unless otherwise indicated.  
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1           4.     Code section 118, subdivision (b), provides that the suspension, expiration, surrender,  
2 cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed  
3 with a disciplinary action during the period within which the license may be renewed, restored,  
4 reissued or reinstated.

5           5.     Code section 4300.1 states:

6                     The expiration, cancellation, forfeiture, or suspension of a board-issued license  
7 by operation of law or by order or decision of the board or a court of law, the  
8 placement of a license on a retired status, or the voluntary surrender of a license by a  
9 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.

10                                     **STATUTORY AND REGULATORY PROVISIONS**

11           6.     Code section 4059 states, in part, that a person may not furnish any dangerous drug  
12 except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or  
13 naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device,  
14 except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or  
15 naturopathic doctor pursuant to Section 3640.7.  
16

17           7.     Code section 4060 states, in part:

18                     No person shall possess any controlled substance, except that furnished to a  
19 person upon the prescription of a physician, dentist, podiatrist, optometrist,  
20 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant  
21 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a  
22 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to  
23 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist  
24 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph  
25 (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply  
26 to the possession of any controlled substance by a manufacturer, wholesaler,  
pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian,  
naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant,  
when in stock in containers correctly labeled with the name and address of the  
supplier or producer.

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1 8. Code section 4300 states:

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

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

6 (1) Suspending judgment.

7 (2) Placing him or her upon probation.

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

9 (4) Revoking his or her license.

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

12 (c) The board may refuse a license to any applicant guilty of unprofessional  
13 conduct. The board may, in its sole discretion, issue a probationary license to any  
14 applicant for a license who is guilty of unprofessional conduct and who has met all  
15 other requirements for licensure. The board may issue the license subject to any  
16 terms or conditions not contrary to public policy, including, but not limited to, the  
17 following:

16 (1) Medical or psychiatric evaluation.

17 (2) Continuing medical or psychiatric treatment.

18 (3) Restriction of type or circumstances of practice.

19 (4) Continuing participation in a board-approved rehabilitation program.

20 (5) Abstention from the use of alcohol or drugs.

21 (6) Random fluid testing for alcohol or drugs.

22 (7) Compliance with laws and regulations governing the practice of pharmacy.

23 (d) The board may initiate disciplinary proceedings to revoke or suspend any  
24 probationary certificate of licensure for any violation of the terms and conditions of  
25 probation. Upon satisfactory completion of probation, the board shall convert the  
26 probationary certificate to a regular certificate, free of conditions.

1 (e) The proceedings under this article shall be conducted in accordance with  
2 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the  
3 Government Code, and the board shall have all the powers granted therein. The  
4 action shall be final, except that the propriety of the action is subject to review by the  
5 superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

6 9. Code section 4301 states, in part:

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

11 ...

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

15 ...

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

18 (l) The conviction of a crime substantially related to the qualifications,  
19 functions, and duties of a licensee under this chapter. The record of conviction of a  
20 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
21 States Code regulating controlled substances or of a violation of the statutes of this  
22 state regulating controlled substances or dangerous drugs shall be conclusive evidence  
23 of unprofessional conduct. In all other cases, the record of conviction shall be  
24 conclusive evidence only of the fact that the conviction occurred. The board may  
25 inquire into the circumstances surrounding the commission of the crime, in order to  
26 fix the degree of discipline or, in the case of a conviction not involving controlled  
27 substances or dangerous drugs, to determine if the conviction is of an offense  
28 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.

...

1 (o) Violating or attempting to violate, directly or indirectly, or assisting in or  
2 abetting the violation of or conspiring to violate any provision or term of this chapter  
3 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.

4 10. Health and Safety Code section 11170 provides that no person shall prescribe,  
5 administer, or furnish a controlled substance for himself.

6 11. Health and Safety Code section 11171 provides that no person shall prescribe,  
7 administer, or furnish a controlled substance except under the conditions and in the manner  
8 provided by the state Uniform Controlled Substances Act, Health and Safety Code section 11000  
9 et seq.

10 12. Health and Safety Code section 11173, subdivision (a), provides, in part, that no  
11 person shall obtain, or attempt to obtain controlled substances by fraud, deceit, misrepresentation,  
12 or subterfuge.

13 13. Health and Safety Code section 11350, subdivision (a), provides that no person shall  
14 possess a controlled substance without a prescription.

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

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

23 **COST RECOVERY**

24 15. Code section 125.3 states, in part, that the Board may request the administrative law  
25 judge to direct a licentiate found to have committed a violation or violations of the licensing act to  
26 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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**DRUGS**

16. Norco is the trade name for Hydrocodone 10mg and Acetaminophen 325mg, which is designated as a Schedule III controlled substance by Health and Safety Code section 11056, subdivision(e)(4), and as a dangerous drug by Business and Professions Code section 4022.

Hydrocodone is a narcotic analgesic for the pain relief.

**FACTUAL STATEMENT**

17. From on or about October 8, 2007, Kaiser Pharmacy in Pinole, California, employed Respondent as a pharmacy technician.

18. Starting in or around September 2012, due to an inconsistency in Norco tablets they had versus what they should have had, Kaiser Pharmacy began to audit and investigate to identify the source or sources of the loss. Between April 1, and 25, 2013, Kaiser Pharmacy video camera footage shows Respondent diverting bottles Norco tablets on four occasions.

19. In around April 2013, Respondent diverted approximately 640 Norco tablets from Kaiser Pharmacy.

20. Respondent admitted to a National Special Investigations Unit special investigator to diverting and selling an unknown amount of Norco for approximately three months.

21. On or about May 17, 2013, Respondent resigned from Kaiser.

22. On or about August 15, 2013, in a criminal matter entitled *The People of the State of California v. Denny Latakoon*, Contra County Superior Court Case No. 314236-1, Respondent was convicted by guilty plea to embezzlement (Pen. Code, § 508), a felony. The court sentenced Respondent to serve three days in jail and three years of court probation, and ordered him to comply with other terms and conditions. The court ordered that if Respondent completed the Penal Code section 1000 program, it will reduce the embezzlement conviction to a misdemeanor. The court dismissed the charge of selling controlled substances (Health & Saf. Code, § 11352).

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**FIRST CAUSE FOR DISCIPLINE**

**(Substantially Related Conviction)**

23. Respondent's license is subject to discipline because he was convicted of embezzlement. (Bus. & Prof. Code, § and Cal. Code Regs., tit. 16, §1770.). The circumstances are more particularly set forth in paragraph 2, above.

**SECOND CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct: Commission of Acts of Moral Turpitude)**

24. Respondent's license is subject to discipline because he committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption because he stole, diverted, and resold controlled substances and dangerous drugs during his employment as a pharmacy technician at Kaiser Pharmacy. (Bus. & Prof. Code, § 4301, subd. (f).) The circumstances are more particularly set forth in paragraphs 18 through 24, above.

**THIRD CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct - Violating State Statutes re: Controlled Substances)**

25. Respondent's license is subject to discipline for violating state statutes regulating controlled substances and dangerous drugs, including, but not limited to, Code section 4060 and Health and Safety Code sections 11170, 11171, 11173, subdivision (a), and 11350, subdivision (a), because he unlawfully obtained and possessed controlled substances and dangerous drugs. (Bus. & Prof. Code, § 4301, subd. (j).) The circumstances are more particularly set forth in paragraphs 18 through 23, above.

**FOURTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct - Violating Provisions of the Pharmacy Law)**

26. Respondent's license is subject to discipline for violating the provisions of the Pharmacy Law (commencing with Code section 4000, et seq.) and applicable federal and state laws and regulations governing pharmacy because he unlawfully possessed and furnished to himself controlled substances and dangerous drugs without a prescription in violation of Code sections 4059 and 4060. (Bus. & Prof. Code, § 4301, subd. (o).) The circumstances are more particularly set forth in paragraphs 18 through 26, above.

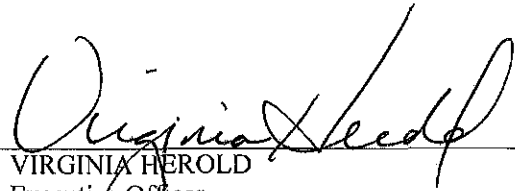
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**PRAYER**

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 77727, issued to Denny Lotakoon;
2. Ordering Denny Lotakoon 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; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 11/4/14



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

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