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

11 In the Matter of the Accusation Against:

Case No. 5167

12 **ALEX MINH THAI**
2467 Grafton Street
13 El Cajon, CA 92020

ACCUSATION

14 **Pharmacy Technician Registration No.**
15 **TCH 52044**

Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On December 29, 2003, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 52044 to Alex Minh Thai (Respondent). The Pharmacy Technician
23 Registration expired on December 31, 2013, and has not been renewed.

24 **JURISDICTION**

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

1 (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.

2 8. Section 4059, subdivision (a) states:

3 (a) A person may not furnish any dangerous drug, except upon the
4 prescription of a physician, dentist, podiatrist, optometrist, or veterinarian. A
5 person may not furnish any dangerous device, except upon the prescription of a
physician, dentist, podiatrist, optometrist, or veterinarian.

6 9. Section 4060 states:

7 No person shall possess any controlled substance, except that furnished to a
8 person upon the prescription of a physician, dentist, podiatrist, optometrist,
9 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
10 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
11 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,
12 or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of
Section 4052. This section shall not apply to the possession of any controlled
13 substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician,
podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
14 nurse-midwife, nurse practitioner, or physician assistant, when in stock in
containers correctly labeled with the name and address of the supplier or
15 producer.

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

18
19 10. Section 4301 states in pertinent part:

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

23

24 (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
25 a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

26

27 (h) The administering to oneself, of any controlled substance, or the use of
28 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

1 chapter, or to any other person or to the public, or to the extent that the use
2 impairs the ability of the person to conduct with safety to the public the practice
3 authorized by the license.

4

5 (j) The violation of any of the statutes of this state or of the United States
6 regulating controlled substances.

7

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

13

14 11. Section 11170 of the Health and Safety (H&S) Code states:

15 No person shall prescribe, or furnish a controlled substance for himself.

16 12. Section 11173, subdivision (a) of the H&S Code states:

17 No person shall obtain or attempt to obtain controlled substances, or procure
18 or attempt to procure the administration of or prescription for controlled substances,
19 (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of
20 a material fact.

21 13. Section 11350, subdivision (a) of the H&S Code states:

22 (a) Except as otherwise provided in this division, every person who
23 possesses (a) any controlled substance specified in subdivision (b) or (c), or
24 paragraph (f) of Section 11054, specified in paragraph (14), (15), or (20), of
25 subdivision (d) of Section 11054, or specified in subdivision (h) of Section
26 11056, or (2) any controlled substance classified in Schedule III, IV, or V
27 which is a narcotic drug, unless upon written prescription of a physician,
28 dentist, podiatrist, or veterinarian licensed to practice in this state, shall be
punished by imprisonment in the state prison.

COST RECOVERY

14. Section 125.3 states, in pertinent part, that the Board may request the administrative
law judge to direct a licentiate found to have committed a violation or violations of the licensing
act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
case. If a case settles, recovery of investigation and enforcement costs may be included in a
stipulated settlement.

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CONTROLLED SUBSTANCE

15. Hydrocodone/APAP is a Schedule III controlled substance as designated by H&S Code section 11056(e)(4), and is a dangerous drug pursuant to Code section 4022. Hydrocodone is a narcotic pain reliever.

FACTS

16. At all times mentioned herein, Respondent was employed as a pharmacy technician at a CVS pharmacy located at 12358 Poway Road, in Poway, California. On or about January 8, 2013, the pharmacy discovered a loss of 302 tablets of hydrocodone/APAP 5-500mg and 2,375 tablets of hydrocodone/APAP 10-325mg from its inventory. Pharmacy staff were interviewed and Respondent admitted taking hydrocodone/apap from the pharmacy stock for his personal use. Respondent also admitted taking amoxicillin and a Pepsi for himself, without paying for either.

FIRST CAUSE FOR DISCIPLINE

(Dishonest or Fraudulent Acts)

17. Respondent is subject to disciplinary action under section 4301, subdivisions (f), in that he engaged in acts involving moral turpitude, dishonesty, fraud, deceit or corruption by taking hydrocodone/apap, amoxicillin, and a Pepsi from CVS' Poway pharmacy for himself, as detailed above in paragraph 16.

SECOND CAUSE FOR DISCIPLINE

(Unlawful Possession of Controlled Substances)

18. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and (o), in that he unlawfully self-prescribed and possessed hydrocodone/apap, a controlled substance and dangerous drug without a valid prescription, in violation of Code section 4060 and H&S Code section 11350, as detailed above in paragraph 16.

THIRD CAUSE FOR DISCIPLINE

(Unlawful Self Furnishing and Administering Controlled Substances)

19. Respondent is subject to disciplinary action under Code section 4301, subdivisions (h), in that he unlawfully and fraudulently self-prescribed and then self-administered hydrocodone/apap, a controlled substance without a valid prescription, in violation of Code

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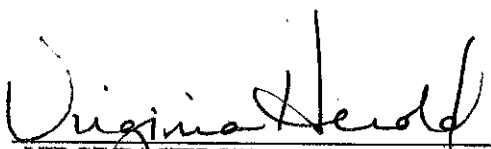
sections 4059 and 4324, and in violation of H&S Code sections 11170, 11173 (a), and 11350 (a), as detailed above in paragraph 16.

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 Pharmacy Technician Registration Number TCH 52044, issued to Alex Minh Thai
- 2. Ordering Alex Minh Thai 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: 7/26/14


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

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