

1 KAMALA D. HARRIS  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 STEPHANIE ALAMO-LATIF  
Deputy Attorney General  
4 State Bar No. 283580  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 327-6819  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5183

12 **CHIO KAUNG SAEPHAN**  
711 N. Santa Fe  
13 Visalia, California 93292

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

14 **Pharmacy Technician**  
15 **Registration No. TCH 64424**

16 Respondent.

17 Virginia Herold ("Complainant") alleges:

18 **PARTIES**

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

21 **Pharmacy Technician Registration**

22 2. On or about August 10, 2005, the Board issued Pharmacy Technician Registration  
23 Number TCH 64424 to Chio Kaung Saephan ("Respondent"). The pharmacy technician  
24 registration was in full force and effect at all times relevant to the charges brought herein and will  
25 expire on June 30, 2015, unless renewed.

26 ///

27 ///

28 ///

1 JURISDICTION

2 3. Business and Professions Code ("Code") section 4300 states, in pertinent part:

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

4 (b) The board shall discipline the holder of any license issued by the board,  
5 whose default has been entered or whose case has been heard by the board and found  
6 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 4. Code section 4300.1 states:

13 The expiration, cancellation, forfeiture, or suspension of a board-issued license  
14 by operation of law or by order or decision of the board or a court of law, the  
15 placement of a license on a retired status, or the voluntary surrender of a license by a  
16 licensee shall not deprive the board of jurisdiction to commence or proceed with any  
17 investigation of, or action or disciplinary proceeding against, the licensee or to render  
18 a decision suspending or revoking the license.

17 STATUTORY PROVISIONS

18 5. Code section 4301 states, in pertinent part:

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

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

24 (h) The administering to oneself, of any controlled substance, or the use of any  
25 dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
26 dangerous or injurious to oneself, to a person holding a license under this chapter, or  
27 to any other person or to the public, or to the extent that the use impairs the ability of  
28 the person to conduct with safety to the public the practice authorized by the license.

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

28 ///

1 (f) The conviction of a crime substantially related to the qualifications,  
2 functions, and duties of a licensee under this chapter. The record of conviction of a  
3 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
4 States Code regulating controlled substances or of a violation of the statutes of this  
5 state regulating controlled substances or dangerous drugs shall be conclusive  
6 evidence of unprofessional conduct. In all other cases, the record of conviction shall  
7 be conclusive evidence only of the fact that the conviction occurred. The board may  
8 inquire into the circumstances surrounding the commission of the crime, in order to  
9 fix the degree of discipline or, in the case of a conviction not involving controlled  
10 substances or dangerous drugs, to determine if the conviction is of an offense  
11 substantially related to the qualifications, functions, and duties of a licensee under this  
12 chapter. A plea or verdict of guilty or a conviction following a plea of nolo  
13 contendere is deemed to be a conviction within the meaning of this provision. The  
14 board may take action when the time for appeal has elapsed, or the judgment of  
15 conviction has been affirmed on appeal or when an order granting probation is made  
16 suspending the imposition of sentence, irrespective of a subsequent order under  
17 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of  
18 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or  
19 dismissing the accusation, information, or indictment.

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

14 6. Code section 4022 states:

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

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

18 (b) Any device that bears the statement: "Caution: federal law restricts this  
19 device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar import,  
20 the blank to be filled in with the designation of the practitioner licensed to use or  
21 order use of the device.

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

22 7. Code section 4059(a) states:

23 (a) A person may not furnish any dangerous drug, except upon the prescription  
24 of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
25 pursuant to Section 3640.7. A person may not furnish any dangerous device, except  
26 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or  
27 naturopathic doctor pursuant to Section 3640.7.

26 8. Code section 4060 states, in pertinent part:

27 No person shall possess any controlled substance, except that furnished to a  
28 person upon the prescription of a physician, dentist, podiatrist, optometrist,  
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant

1 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a  
2 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to  
3 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist  
pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

4 9. Health and Safety ("H&S") Code section 11170 states, "No person shall prescribe,  
5 administer, or furnish a controlled substance for himself."

6 10. Health and Safety Code section 11173(a), states:

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

#### 10 COST RECOVERY

11 11. Code section 125.3 provides, in pertinent part, that the Board may request the  
12 administrative law judge to direct a licentiate found to have committed a violation or violations of  
13 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
14 enforcement of the case.

#### 15 DRUGS

16 12. *Norco*, a brand name for acetaminophen and hydrocodone bitartrate, is a Schedule III  
17 controlled substance pursuant to Health and Safety Code section 11056(e)(4), and a dangerous  
18 drug pursuant to Business and Professions Code section 4022.

19 13. *Xanax*, a brand name for alpraxolam, is a Schedule IV controlled substance pursuant  
20 to Health and Safety Code section 11057(d)(1), and a dangerous drug pursuant to Business and  
21 Professions Code section 4022.

#### 22 BACKGROUND

23 14. Respondent was employed as a registered pharmacy technician at CVS Pharmacy  
24 #2541, located at 1102 N. Demaree Street, Visalia, California ("CVS"), since approximately  
25 2009.

26 15. On or about May 14, 2013, CVS found a discrepancy in its drug count. CVS  
27 subsequently launched an investigation and on or about June 24, 2013, Respondent admitted to  
28 CVS management that between in or around September 2012 and June 2013, he took

1 approximately 320 tablets of Norco and 200 tablets of Xanax 2 mg. from CVS without  
2 permission or a valid prescription. Respondent admitted that during that same time period he  
3 self-administered Norco without a valid prescription.

4 **FIRST CAUSE FOR DISCIPLINE**

5 (Criminal Conviction)

6 16. Respondent is subject to disciplinary action pursuant to Code section 4301,  
7 subdivision (I), on the grounds of unprofessional conduct, in that Respondent committed crimes  
8 substantially related to the qualifications, functions, and duties of a licensed pharmacy technician.  
9 Specifically, on or about February 19, 2014, in a criminal proceeding entitled *People v. Chio*  
10 *Kaung Saephan*, Tulare County Superior Court, Case No. VCF288743, Respondent was  
11 convicted by the court on his plea of nolo contendere to violating Penal Code section 487(a)  
12 (grand theft by embezzlement), a felony. The circumstances of the crime are that on or about and  
13 between July 27, 2011, and June 16, 2013, while employed as a pharmacy technician at CVS,  
14 Respondent took money and personal property exceeding \$950 in value from CVS.

15 **SECOND CAUSE FOR DISCIPLINE**

16 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

17 17. Respondent is subject to disciplinary action pursuant to Code section 4301,  
18 subdivision (f), on the grounds of unprofessional conduct, in that he committed acts involving  
19 moral turpitude, dishonesty, fraud, deceit, and/or corruption. The facts and circumstances are set  
20 forth in paragraphs 14 through 16, above.

21 **THIRD CAUSE FOR DISCIPLINE**

22 (Violation of Statutes Regulating Controlled Substances)

23 18. Respondent is subject to disciplinary action pursuant to Code section 4301,  
24 subdivision (j), on the grounds of unprofessional conduct, in that while on duty as a registered  
25 pharmacy technician at CVS, during, but not limited to, that period of time between in on or  
26 around September 2012 and June 2013, Respondent violated statutes regulating controlled  
27 substances and dangerous drugs, as follows:  
28

1 a. **Health & Safety Code section 11173, subdivision (a)**: Respondent obtained Norco  
2 and Xanax, controlled substances, by fraud, deceit, misrepresentation, or subterfuge, by taking the  
3 drugs from CVS supplies. The facts and circumstances are set forth in paragraphs 14 through 17,  
4 above.

5 b. **Health & Safety Code section 11170**: Respondent furnished and administered to  
6 himself, Norco, a controlled substance. The facts and circumstances are set forth in paragraphs  
7 14 through 17, above.

8 c. **Business and Professions Code section 4060**: Respondent had possession of  
9 controlled substances, Norco and Xanax, without authorization or a valid prescription therefore.  
10 The facts and circumstances are set forth in paragraphs 14 through 17, above.

11 d. **Business and Professions Code section 4059, subdivision (a)**: Respondent  
12 furnished Norco and Xanax, dangerous drugs, to himself, without a prescription, from CVS  
13 inventory. The facts and circumstances are set forth in paragraphs 14 through 17, above.

14 **FOURTH CAUSE FOR DENIAL**

15 **(Violation of Pharmacy Law)**

16 19. Respondent is subject to disciplinary action pursuant to Code section 4301,  
17 subdivision (o), on the grounds of unprofessional conduct, in that while on duty as a registered  
18 pharmacy technician at CVS, Respondent violated or attempted to violate, directly or indirectly,  
19 the laws of pharmacy. The facts and circumstances are set forth in paragraphs 14 through 18,  
20 above.

21 **PRAAYER**

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

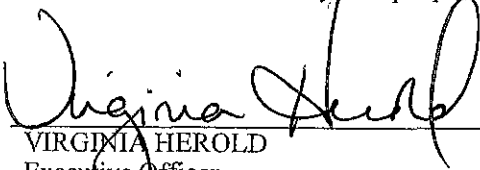
24 1. Revoking or suspending Pharmacy Technician Registration Number TCH 64424,  
25 issued to Chio Kaung Saephan;

26 2. Ordering Chio Kaung Saephan to pay the Board of Pharmacy the reasonable costs of  
27 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
28 125.3; and,

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

DATED: 12/3/14



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

SA2014115620  
11357239.doc