

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 LESLIE A. WALDEN  
Deputy Attorney General  
4 State Bar No. 196882  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-3465  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

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

10 In the Matter of the Accusation Against:

Case No. 5385

11 **JAMES BOA NGUYEN**  
12 **641 Gaybar Ave.**  
13 **West Covina, CA 91790**

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

14 **Pharmacist License No. RPH 65281**

15 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about March 2, 2011, the Board of Pharmacy issued Pharmacist License  
23 Number RPH 65281 to James Boa Nguyen (Respondent). The Pharmacist License was in full  
24 force and effect at all times relevant to the charges brought herein and will expire on September  
25 30, 2016, unless renewed.

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**JURISDICTION**

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

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

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

12       5.     Section 4300 of the Code states:

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

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

17               (1) Suspending judgment.

18               (2) Placing him or her upon probation.

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

20               (4) Revoking his or her license.

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

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

28               (1) Medical or psychiatric evaluation.

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- "(2) Continuing medical or psychiatric treatment.
- "(3) Restriction of type or circumstances of practice.
- "(4) Continuing participation in a board-approved rehabilitation program.
- "(5) Abstention from the use of alcohol or drugs.
- "(6) Random fluid testing for alcohol or drugs.
- "(7) Compliance with laws and regulations governing the practice of pharmacy.

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

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

6. Section 4300.1 of the Code states:

"The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, 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 states:

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

"...

"(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to

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

4 "...

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

7 "...

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

12 "...."

13 8. Section 4022 of the Code states

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

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

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

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

23 9. Section 4327 of the Code provides:

24 "Any person who, while on duty, sells, dispenses or compounds any drug while under the  
25 influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor."

26 10. Section 11170 of the Health and Safety Code provides:

27 "No person shall prescribe, administer, or furnish a controlled substance for himself."  
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1 **COST RECOVERY**

2 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licentiate found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
7 included in a stipulated settlement.

8 **DRUG CLASSIFICATIONS**

9 12. Lyrica is the brand name for Pregabalin, and is a dangerous drug pursuant to Business  
10 and Professions Code section 4022 and a Schedule V controlled substance pursuant to Health and  
11 Safety Code section 11058. It is used to treat fibromyalgia, neuralgia and seizures.

12 13. Ativan is the brand name for Lorazepam, and is a dangerous drug pursuant to  
13 Business and Professions Code section 4022 and a Schedule IV controlled substance pursuant to  
14 Health and Safety Code section 11057 subdivision (d)(16). It is used to treat anxiety.

15 14. Klonopin is the brand name for Clonazepam, and is a dangerous drug pursuant to  
16 Business and Professions Code section 4022 and a Schedule IV controlled substance pursuant to  
17 Health and Safety Code section 11057 subdivision (d)(7). It is used to treat anxiety.

18 15. Norco is the brand name for Hydrocodone/apap 5/325, and is a dangerous drug  
19 pursuant to Business and Professions Code section 4022 and a Schedule III controlled substance  
20 pursuant to Health and Safety Code section 11056 subdivision (e)(2). It is used to treat pain.

21 16. Phenergan is the brand name for Promethazine with Codeine, and is a dangerous drug  
22 pursuant to Business and Professions Code section 4022 and a Schedule V controlled substance  
23 pursuant to Health and Safety Code section 11058 subdivision (C)(1). It is used to treat cough.

24 **FIRST CAUSE FOR DISCIPLINE**

25 (Unprofessional Conduct - Self-Furnishing of a Controlled Substance)

26 17. Respondent is subject to disciplinary action under sections 4301 subdivisions (o) and  
27 (j) in conjunction with Health and Safety Code section 11170 in that he violated the statutes  
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1 regulating controlled substances in California or the United States by prescribing or furnishing  
2 controlled substances to himself. The circumstances are as follows:

3 18. From on or about September 7, 2013 through January 8, 2014, while working as a  
4 pharmacist at Vons Pharmacy 2425 located at 850 Linden Avenue in Carpinteria, California,  
5 Respondent illegally furnished to himself the following controlled substance prescriptions:

6 a) Rx 4052153, Hydrocodone/apap 5/325 mg #30 on September 18, 2013;

7 b) Rx 4052208, Lyrica 25 mg #60 on September 26, 2013;

8 c) Rx 4052209, Lorazepam 1 mg #30 on September 26, 2013;

9 d) Rx 4052221, Lyrica 150 mg #60 on September 28 2013;

10 e) Rx 4052790, Promethazine with codeine 240 ml on January 8, 2014;

11 f) Rx 4052658 Clonazepam 0.5 mg #30 on January 8, 2014;

12 g) Rx 4052843, Lyrica 150 #120 on January 18, 2014;

13 h) Rx. 4052757, Lorazepam 1 mg #30 on January 18, 2014; and

14 i) Rx 4052790, Promethazine with codeine 240 ml on January 18, 2014.

15 **SECOND CAUSE FOR DISCIPLINE**

16 (Unprofessional Conduct - Working as Pharmacist Under the Influence of Controlled Substance)

17 19. Respondent is subject to disciplinary action under sections 4301 subdivision (h) and  
18 4327 in that Respondent illegally administered to himself a controlled substance that impaired his  
19 ability to safely practice of pharmacy. The circumstances are as follows:

20 20. On or about January 20, 2014, while working as a pharmacist at Vons Pharmacy 2425  
21 located at 850 Linden Avenue in Carpinteria, California, Respondent was observed by pharmacy  
22 staff to be functioning as a pharmacist while under the influence.

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:

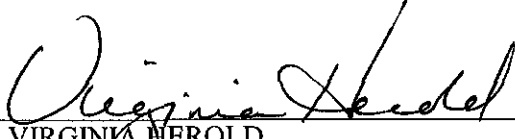
26 1. Revoking or suspending Pharmacist License Number RPH 65281, issued to James  
27 Boa Nguyen;

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2. Ordering James Boa Nguyen 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: 10/20/15



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

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