

1 XAVIER BECERRA
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 GEOFFREY S. ALLEN
Deputy Attorney General
4 State Bar No. 193338
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 879-0004
Facsimile: (510) 622-2270
7 E-mail: Geoffrey.Allen@doj.ca.gov
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12 **MALAYKHAM BOUTDY**
13 **1117 Treat**
14 **San Francisco, CA 94110**
15 **Pharmacy Technician Registration No. TCH**
52909
16 Respondent.

Case No. 5968
A C C U S A T I O N

17
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 December 22, 2003, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration Number TCH 52909 (License) to Malaykham Boutdy (Respondent).
24 The License was in full force and effect at all times relevant to the charges brought in this
25 Accusation. The License expired on February 28, 2017, and has not been renewed.

26 ///
27 ///
28 ///

JURISDICTION

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

4. Section 4300 of the Code states:

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

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

“(1) Suspending judgment.

“(2) Placing him or her upon probation.

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

“(4) Revoking his or her license.

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

....

“(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.”

5. 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

1 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
2 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
3 proceeding against, the licensee or to render a decision suspending or revoking the license.”

4 STATUTORY AND REGULATORY PROVISIONS

5 6. Section 4301 of the Code states:

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

9

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

13

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

16

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

1 judgment of conviction has been affirmed on appeal or when an order granting probation is made
2 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
3 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
4 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
5 indictment.

6

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

11

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

17 8. Section 4060 of the Code states:

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

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

4 9. Section 11173 of the Health and Safety Code, in pertinent part, states:

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

8

9 10. Section 490 of the Code, in pertinent part, states:

10 "(a) In addition to any other action that a board is permitted to take against a licensee, a
11 board may suspend or revoke a license on the ground that the licensee has been convicted of a
12 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
13 or profession for which the license was issued.

14 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
15 discipline a licensee for conviction of a crime that is independent of the authority granted under
16 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
17 of the business or profession for which the licensee's license was issued.

18 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
19 conviction following a plea of nolo contendere. An action that a board is permitted to take
20 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
21 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
22 made suspending the imposition of sentence, irrespective of a subsequent order under Section
23 1203.4 of the Penal Code.

24"

25 COST RECOVERY

26 11. Section 125.3 of the Code states, in pertinent part, that the Board may request the
27 administrative law judge to direct a licentiate found to have committed a violation or violations of
28

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 DRUGS

4 12. Alprazolam is a scheduled IV controlled substance pursuant to Health and Safety
5 code section 11057, subdivision (d)(1), and a dangerous drug pursuant to Business and
6 Professions Code section 4022. It is used to treat anxiety.

7 FIRST CAUSE FOR DISCIPLINE

8 (Theft of controlled substances)

9 13. Respondent has subjected her License to discipline in that Respondent committed an
10 act involving moral turpitude, dishonesty, fraud, deceit, or corruption. (Bus. & Prof. Code, §
11 4301, subd. (f).)

12 14. The circumstances are that during the months of at least July and August 2016,
13 Respondent stole multiple quantities of alprazolam on several occasions while working as a
14 pharmacy technician at Kaiser IP/OP Pharmacy on San Francisco, CA.

15 SECOND CAUSE FOR DISCIPLINE

16 (Criminal Conviction Substantially Related to the Functions of a Licensee)

17 15. Respondent has subjected her License to discipline in that Respondent has been
18 convicted of a crime substantially related to qualifications, functions, and duties of a pharmacy
19 technician. (Bus. & Prof. Code, §§ 490, 4301, subd. (l).) The circumstances are as follows:

20 16. On or about January 12, 2017, in a criminal matter entitled *The People of the State of*
21 *California v. Malaykham Boutdy*, in the San Francisco County Superior Court, Case Number
22 16015565, Respondent pled guilty and was convicted of possession for sale of designated
23 substances and grand theft. (Health & Saf. Code § 11375, subd. (b), par. (1); Pen. Code, § 487,
24 subd. (a).) Respondent was sentenced to county jail, and ordered not to seek employment as a
25 pharmacy technician. The conviction was based upon a August 25, 2016, investigation in which
26 officers with the San Francisco Police Department conducted a surveillance at the hospital where
27 Respondent was employed as a pharmacy technician. At approximately 1515 hr., Respondent
28 placed thirty-six (36) bottles of suspected Alprazolam in a multi-colored bag, and exited the

1 hospital. An officer with the San Francisco Police Department approached Respondent, detained
2 her and seized the bag. Officer Montero opened the bag, and located thirty-six (36) white bottles.
3 Thirty-five (35) of the bottles contained one hundred (100) of two (2) milligram Alprazolam
4 tablets, and one (1) of the bottles contained an electronic tracking device and placebo tablets.
5 Respondent was placed under arrest for possession for sale of designated substances and grand
6 theft. (Health & Saf. Code § 11375, subd. (b), par. (1); Pen. Code, § 487, subd. (a).)

7 **THIRD CAUSE FOR DISCIPLINE**

8 (Unlawful Furnishing of Controlled Substances)

9 17. Respondent has subjected her License to discipline in that Respondent unlawfully
10 furnished controlled substances. (Bus. & Prof. Code, §§ 4059, 4301, subds. (j) and (o).) The
11 circumstances are described above in paragraphs 13-15.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 (Unlawful Possession of Controlled Substances)

14 18. Respondent has subjected her License to discipline in that Respondent unlawfully
15 possessed controlled substances. (Bus. & Prof. Code, §§ 4060, 4301, subds. (j) and (o).) The
16 circumstances are described above in paragraphs 13-15.

17 **FIFTH CAUSE FOR DISCIPLINE**

18 (Obtaining Controlled Substances by Fraud, Deceit or Subterfuge)

19 19. Respondent has subjected her License to discipline in that Respondent obtained
20 controlled substances by fraud, deceit or subterfuge. (Bus. & Prof. Code, § 4301, subds. (j) and
21 (o); Health & Saf. Code, § 11173.) The circumstances are described above in paragraphs 13-15.

22 **PRAYER**

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

25 1. Revoking or suspending Pharmacy Technician Registration Number TCH 52909,
26 issued to Malaykham Boutdy

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

2. Ordering Malaykham Boutdy 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: 10/27/17 

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

SA2013113828
90833533.docx