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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. 6325

12 **WALGREENS #04517**
13 **2600 Mowry Avenue**
14 **Fremont, CA 94538**

ACCUSATION

15 **Pharmacy License No. PHY 53062**

16 **and**

17 **WALGREENS #00900**
18 **2105 Morrill Avenue**
19 **San Jose, CA 95132**

20 **Pharmacy License No. PHY 52768**

21 **and**

22 **WALGREENS #05480**
23 **1833 N. Milpitas Boulevard**
24 **Milpitas, CA 95035**

25 **Pharmacy License No. PHY 52864**

26 **and**

27 **KIM THIEN LE aka KIM T. LE**
28 **1133 Park Glen Court**
Milpitas, CA 95035

Pharmacy Technician License No. TCH 36481

Respondents.

1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about December 31, 2014, the Board of Pharmacy issued Pharmacy License
6 Number PHY 53062 to Walgreens Co. dba Walgreens #04517 (Respondent Walgreens #04517).
7 The Pharmacy License was in full force and effect at all times relevant to the charges brought
8 herein and will expire on December 1, 2018, unless renewed.

9 3. On or about December 31, 2014, the Board of Pharmacy issued Pharmacy License
10 Number PHY 52768 to Walgreens Co. dba Walgreens #00900 (Respondent Walgreens #00900).
11 The Pharmacy License was in full force and effect at all times relevant to the charges brought
12 herein and will expire on December 1, 2018, unless renewed.

13 4. On or about December 31, 2014, the Board of Pharmacy issued Pharmacy License
14 Number PHY 52864 to Walgreens Co. dba Walgreens #05480 (Respondent Walgreens #05480).
15 The Pharmacy License was in full force and effect at all times relevant to the charges brought
16 herein and will expire on December 1, 2018, unless renewed.

17 5. On or about February 15, 2001, the Board of Pharmacy issued Pharmacy Technician
18 License Number TCH 36481 to Kim Thien Le aka Kim T. Le (Respondent Le). The Pharmacy
19 Technician License expired on October 31, 2008, and was subsequently cancelled.

20 **JURISDICTION**

21 6. This Accusation is brought before the Board under the authority of the following
22 laws. All statutory references are to the Business and Professions Code (Code), unless indicated.

23 7. Section 4011 of the Code provides that the Board shall administer and enforce both
24 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
25 Act [Health & Safety Code, § 11000 et seq.].

26 8. Section 4300, subdivision (a), of the Code provides that every license issued by the
27 Board may be suspended or revoked.

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1 14. Section 4081 of the Code states, in pertinent part:

2 “(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs
3 or dangerous devices shall be at all times during business hours open to inspection by authorized
4 officers of the law, and shall be preserved for at least three years from the date of making. . . .

5 (b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal
6 drug retailer shall be jointly responsible, with the pharmacist-in-charge or representative-in-
7 charge, for maintaining the records and inventory described in this section.”

8 15. Section 4105 of the Code states, in pertinent part:

9 “(a) All records or other documentation of the acquisition and disposition of dangerous
10 drugs and dangerous devices by any entity licensed by the board shall be retained on the licensed
11 premises in a readily retrievable form. . . .

12 (c) The records required by this section shall be retained on the licensed premises for a
13 period of three years from the date of making.

14 (d) Any records that are maintained electronically shall be maintained so that the
15 pharmacist-in-charge, [or] the pharmacist on duty if the pharmacist-in-charge is not on duty, . . .
16 shall, at all times during which the licensed premises are open for business, be able to produce a
17 hard copy and electronic copy of all records of acquisition or disposition or other drug or
18 dispensing-related records maintained electronically. . . .”

19 16. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
20 against any licensee guilty of “unprofessional conduct,” defined to include, but not be limited to:

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

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

26 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
27 violation of or conspiring to violate any provision or term of this chapter or of the applicable
28 federal and state laws and regulations governing pharmacy

1 17. Section 4328 of the Code provides that it is unlawful for any person to permit the
2 compounding or dispensing of prescriptions, or the furnishing of dangerous drugs, in his or her
3 pharmacy, except by a pharmacist.

4 18. Section 4330 of the Code provides, in pertinent part, that it is unlawful for any person
5 who has obtained a license to conduct a pharmacy: to fail to place in charge of the pharmacy a
6 pharmacist; to permit the compounding or dispensing of prescriptions, or the furnishing of
7 dangerous drugs, except by a pharmacist; or to commit any act that would subvert or tend to
8 subvert the efforts of the pharmacist-in-charge to comply with laws governing the pharmacy.

9 19. Section 4332 of the Code makes it unlawful for any person: to fail, neglect, or refuse
10 to maintain the records required by Section 4081; or, when called upon by an authorized officer
11 or a member of the board, to fail, neglect, or refuse to produce or provide the records within a
12 reasonable time; or to willfully produce or furnish records that are false.

13 20. Section 4333 of the Code provides, in pertinent part, that all prescriptions filled by a
14 pharmacy and all other records required by Section 4081 shall be maintained on the premises and
15 available for inspection by authorized officers of the law for a period of at least three years. In
16 cases where the pharmacy discontinues business, these records shall be maintained in a
17 board-licensed facility for at least three years.

18 21. Health and Safety Code section 11152 provides that no person shall write, issue, fill,
19 compound, or dispense a prescription that does not conform to this division.

20 22. Health and Safety Code section 11158 states, in pertinent part:

21 “(a) Except as provided in Section 11159 [order for controlled substances for use by a
22 patient in a county or licensed hospital] or in subdivision (b) of this section [prescriber dispensing
23 of 72-hour supply of Schedule II controlled substance], no controlled substance classified in
24 Schedule II shall be dispensed without a prescription meeting the requirements of this chapter.
25 Except as provided in Section 11159 or when dispensed directly to an ultimate user by a
26 practitioner, other than a pharmacist or pharmacy, no controlled substance classified in Schedule
27 III, IV, or V may be dispensed without a prescription meeting the requirements of this chapter.”

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1 23. Health and Safety Code section 11162.1, subdivision (a), provides, in pertinent part,
2 that prescription forms for controlled substances shall be printed with:

3 (1) A latent, repetitive "void" pattern; if a prescription is scanned or photocopied, the word
4 "void" shall appear in a pattern across the entire front of the prescription.

5 (2) A watermark on the backside of the prescription blank; the watermark shall consist of
6 the words "California Security Prescription."

7 (3) A chemical void protection that prevents alteration by chemical washing.

8 (4) A feature printed in thermochromic ink.

9 (5) An area of opaque writing so that the writing disappears if the prescription is lightened.

10 (6) A description of the security features included on each prescription form.

11 (7)(A) Six quantity check off boxes so that the prescriber may indicate the quantity by
12 checking the applicable box where the following quantities shall appear:

13 1-24

14 25-49

15 50-74

16 75-100

17 101-150

18 151 and over.

19 (B) In conjunction with the quantity boxes, a space to designate the units referenced in the
20 quantity boxes when the drug is not in tablet or capsule form.

21 (8) A statement printed on the bottom of the prescription blank that the "Prescription is void
22 if the number of drugs prescribed is not noted."

23 (9) The preprinted name, category of licensure, license number, federal controlled
24 substance registration number, and address of the prescribing practitioner.

25 (10) Check boxes so that the prescriber may indicate the number of refills ordered.

26 (11) The date of origin of the prescription.

27 (12) A check box indicating the prescriber's order not to substitute.

28 (13) A number assigned to the approved security printer by the Department of Justice.

1 (14)(A) A check box by the name of each prescriber when a form lists multiple prescribers.

2 (B) Each prescriber who signs the prescription form shall identify himself or herself as the
3 prescriber by checking the box by his or her name.

4 Health and Safety Code section 11162.1, subdivision (b), further provides that each batch of
5 controlled substance prescription forms shall have the lot number printed on the form and each
6 form within that batch shall be numbered sequentially beginning with the numeral one.

7 24. Health and Safety Code section 11164 states, in pertinent part:

8 "Except as provided in Section 11167 [emergency], no person shall prescribe a controlled
9 substance, nor shall any person fill, compound, or dispense a prescription for a controlled
10 substance, unless it complies with the requirements of this section.

11 (a) Each prescription for a controlled substance classified in Schedule II, III, IV, or V,
12 except as authorized by subdivision (b), shall be made on a controlled substance prescription form
13 as specified in Section 11162.1 and shall meet the following requirements:

14 (1) The prescription shall be signed and dated by the prescriber in ink and shall contain the
15 prescriber's address and telephone number; the [patient name]; refill information, such as the
16 number of refills ordered and whether the prescription is a first-time request or a refill; and the
17 name, quantity, strength, and directions for use of the controlled substance prescribed.

18 (2) The prescription shall also contain the address of the person for whom the controlled
19 substance is prescribed. If the prescriber does not specify this address on the prescription, the
20 [pharmacy] shall write or type the address on the prescription or maintain this information in a
21 readily retrievable form in the pharmacy.

22 (b)(1) Notwithstanding paragraph (1) of subdivision (a) of Section 11162.1, any controlled
23 substance classified in Schedule III, IV, or V may be dispensed upon an oral or electronically
24 transmitted prescription, which shall be produced in hard copy form and signed and dated by the
25 pharmacist filling the prescription or by any other person expressly authorized by provisions of
26 the Business and Professions Code. Any person who transmits, maintains, or receives any
27 electronically transmitted prescription shall ensure the security, integrity, authority, and
28 confidentiality of the prescription.

1 (2) The date of issue of the prescription and all the information required for a written
2 prescription by subdivision (a) shall be included in the written record of the prescription; the
3 pharmacist need not include the address, telephone number, license classification, or federal
4 registry number of the prescriber or the address of the patient on the hard copy, if that information
5 is readily retrievable in the pharmacy.

6 (3) Pursuant to an authorization of the prescriber, any agent of the prescriber on behalf of
7 the prescriber may orally or electronically transmit a prescription for a controlled substance
8 classified in Schedule III, IV, or V, if in these cases the written record of the prescription required
9 by this subdivision specifies the name of the agent of the prescriber transmitting the prescription.”

10 REGULATORY PROVISIONS

11 25. California Code of Regulations, title 16, section 1717, subdivision (b) requires, in
12 pertinent part, that for each prescription on file, certain information shall be maintained and be
13 readily retrievable in the pharmacy, including the date dispensed, and the name or initials of the
14 dispensing pharmacist. All prescriptions filled or refilled by an intern pharmacist must also be
15 initialed by the supervising pharmacist before they are dispensed.

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

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

21 COST RECOVERY

22 27. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
23 administrative law judge to direct a licentiate found to have committed a violation of the licensing
24 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

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1 FACTUAL BACKGROUND

2 28. On or about August 8, 2017, during and subsequent to an inspection at Respondent
3 Walgreens #04517, it was discovered that the pharmacy had dispensed prescriptions pursuant to
4 controlled substance prescription forms that did not meet statutory requirements. These included:

- 5 • **RX 2895220 (alprazolam 2mg; patient MK)¹**: lacked “California Security
6 Prescription” watermark; lacked check boxes to indicate number of refills; lacked
7 identifying number assigned to the approved security printer by the Department of
8 Justice; and lacked lot and batch numbers printed on the prescription document.
- 9 • **RX 2895879 (alprazolam 2mg; patient HC)**: lacked “California Security
10 Prescription” watermark; lacked check boxes to indicate number of refills; lacked
11 identifying number assigned to the approved security printer by the Department of
12 Justice; and lacked lot and batch numbers printed on the prescription document.
- 13 • **RX 2935775 (alprazolam 2mg; patient MC)**: lacked latent, repetitive “void”
14 pattern printed across the entire front of the prescription document; lacked
15 “California Security Prescription” watermark; lacked check boxes to indicate
16 number of refills; lacked identifying number assigned to approved security printer
17 by Department of Justice; and lacked lot and batch numbers printed on prescription.
- 18 • **RX 2941746 (alprazolam 2mg; patient EC)**: lacked latent, repetitive “void” pattern
19 printed across the entire front of the prescription document; lacked “California
20 Security Prescription” watermark; lacked check boxes to indicate number of refills;
21 lacked identifying number assigned to the approved security printer by the
22 Department of Justice; and lacked lot and batch numbers printed on the prescription.
- 23 • **RX 3012053 (alprazolam 2mg; patient LG)**: lacked latent, repetitive “void” pattern
24 printed across the entire front of the prescription document; lacked check boxes to
25 indicate number of refills; lacked identifying number assigned to the approved
26 security printer by the Department of Justice; and lacked lot and batch numbers
27 printed on the prescription.

28 ¹ Patient initials are used throughout to protect confidentiality.

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- **RX 3021321 (alprazolam 2mg; patient HC):** lacked latent, repetitive “void” pattern printed across the entire front of the prescription document; lacked “California Security Prescription” watermark; lacked check boxes to indicate number of refills; lacked identifying number assigned to the approved security printer by the Department of Justice; and lacked lot and batch numbers printed on the prescription.
- **RX 3023970 (promethazine with codeine 10 mg/6.25mg per 5 ml; patient HC):** lacked latent, repetitive “void” pattern printed across the entire front of the prescription document; lacked “California Security Prescription” watermark; lacked check boxes to indicate number of refills; lacked identifying number assigned to the approved security printer by the Department of Justice; and lacked lot and batch numbers printed on the prescription.
- **RX 3036290 (alprazolam 2mg; patient LC):** lacked latent, repetitive “void” pattern printed across the entire front of the prescription document; lacked “California Security Prescription” watermark; lacked check boxes to indicate number of refills; lacked identifying number assigned to the approved security printer by the Department of Justice; and lacked lot and batch numbers printed on the prescription.
- **RX 3106606 (alprazolam 2mg; patient HC):** lacked latent, repetitive “void” pattern printed across the entire front of the prescription document; lacked “California Security Prescription” watermark; lacked check boxes to indicate number of refills; lacked identifying number assigned to the approved security printer by the Department of Justice; and lacked lot and batch numbers printed on the prescription.
- **RX 3107433 (alprazolam 2mg; patient SC):** lacked latent, repetitive “void” pattern printed across the entire front of the prescription document; lacked “California Security Prescription” watermark; lacked check boxes to indicate number of refills; lacked identifying number assigned to the approved security printer by the Department of Justice; and lacked lot and batch numbers printed on the prescription.

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- **RX 3139666 (alprazolam 2mg; patient HJ):** lacked latent, repetitive “void” pattern printed across the entire front of the prescription document; lacked “California Security Prescription” watermark; lacked check boxes to indicate number of refills.

29. During and subsequent to this inspection, neither the pharmacist on duty nor the pharmacist-in-charge were able to locate the original prescription document for **RX 3012053**.

30. During and subsequent to this inspection, inquiry into the pharmacists responsible for verifying and dispensing the controlled substance prescriptions at issue revealed that the initials KTL were listed as the verifying pharmacist for some of these prescriptions. Those initials were said to correspond to a Kim T. Le, then employed by Walgreens as a pharmacist and pharmacist-in-charge at Respondent Walgreens #00900, who had done remote electronic verification. This individual will hereafter be known as Kim Thien Le aka Kim T. Le (Respondent Le).

31. The Pharmacist License Number listed in Walgreens records for Respondent Le (RPH 58654) was subsequently identified as belonging to another licensed pharmacist with a similar name, who was not employed by Walgreens. When Respondent Le was confronted with this information, she claimed to be the holder of another Pharmacist License Number (RPH 52262). However, RPH 52262 was also determined to belong to another licensed pharmacist with a similar name, and not to Respondent Le. Subsequent investigation discovered that Respondent Le had previously been licensed as a Pharmacy Technician (TCH 36481), but that license had expired in 2008. Respondent Le had never been licensed as a Pharmacist.

32. Subsequent inquiry to Walgreens discovered that Respondent Le had also previously been a pharmacist and the pharmacist-in-charge at Respondent Walgreens #05480.

33. During a subsequent interview with Respondent Le, conducted shortly after the birth of her child, when she was confronted with the fact that the two license numbers she had claimed as her own belonged to other people, Respondent Le said “me and my son would be very grateful if you could just forget about this,” “I will pay whatever fine,” and promised she would “not be coming back to work as a pharmacist.” When asked whether she was a licensed pharmacist, Respondent Le said yes, and said she had received a pharmacy degree from Creighton University in Nebraska. But she continued to avoid the question of what was her valid license number.

1 34. Subsequent inquiry to Creighton University revealed an entry in their files matching
2 Respondent Le's name and date of birth, but showing no undergraduate or graduate degree was
3 awarded. The entry in their files could simply have been the result of an inquiry by her, and did
4 not necessarily indicate enrollment or matriculation. A subsequent inquiry to the agency that
5 licenses pharmacists in Nebraska did not discover any licenses issued to Respondent Le.

6 35. Interviews with staff at Respondent Walgreens #00900 confirmed that Respondent Le
7 had been observed undertaking tasks reserved to licensed pharmacists, including:

- 8 • Performing activities that required the exercise of professional judgment;
- 9 • Reducing oral and/or electronic prescriptions to writing;
- 10 • Verifying non-controlled and controlled substance prescriptions;
- 11 • Counseling patients regarding their prescriptions;
- 12 • Administering immunizations/vaccinations to patients;
- 13 • Supervising clerks, pharmacy technicians, intern pharmacists, and trainees;
- 14 • Ordering non-controlled and controlled medications; and
- 15 • Signing for delivered medications.

16 36. Subsequent inquiry to Walgreens discovered that Respondent Le had worked for
17 Walgreens in one capacity or another since September 20, 1999. Her employment history was:

- 18 • September 1999 – March 2001: Pharmacy Cashier
- 19 • March 2001 – July 2001: Pharmacy Technician
- 20 • July 2001 – November 2006: Intern Pharmacist
- 21 • November 2006 – date of report: Pharmacist
- 22 • April 2016 – date of report: Pharmacy Manager (pharmacist-in-charge [PIC])
 - 23 ○ April 2016 – November 2016: PIC at Respondent Walgreens #05480
 - 24 ○ November 2016 – date of report: PIC at Respondent Walgreens #00900

25 37. The Pharmacist License Number listed in Walgreens records was the first number
26 identified in paragraph 31, above (RPH 58654), which belonged to another licensed pharmacist
27 that was not employed by Walgreens.

28 38. Board records show no intern or pharmacist license(s) issued to Respondent Le.

1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Lack of Documentation of Pharmacist Verification)**

3 47. Respondent Walgreens #04517 is subject to discipline under section 4301,
4 subdivision(s) (j) and/or (o), and/or California Code of Regulations, title 16, section 1717, in that,
5 as described in paragraphs 30 to 40 above, verifications on prescriptions were performed by an
6 individual not holding a pharmacist license, so that no proper pharmacist was identified.

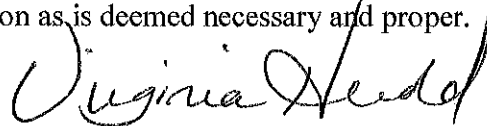
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8 **PRAYER**

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

- 11 1. Revoking or suspending Pharmacy License Number PHY 53062, issued to Walgreens
12 Co. dba Walgreens #04517 (Respondent Walgreens #04517);
- 13 2. Revoking or suspending Pharmacy License Number PHY 52768, issued to Walgreens
14 Co. dba Walgreens #00900 (Respondent Walgreens #00900);
- 15 3. Revoking or suspending Pharmacy License Number PHY 52864, issued to Walgreens
16 Co. dba Walgreens #05480 (Respondent Walgreens #05480);
- 17 4. Revoking or suspending Pharmacy Technician License Number TCH 36481, issued
18 to Kim Thien Le aka Kim T. Le (Respondent Le);
- 19 5. Ordering Respondents to pay the Board the reasonable costs of the investigation and
20 enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
- 21 6. Taking such other and further action as is deemed necessary and proper.

22 DATED: _____

10/11/18



23 VIRGINIA HEROLD
24 Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 Complainant

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