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Attorneys for Complainant

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

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>KHOUNG K. TON<br>6866 Varna Ave.<br>Van Nuys, CA 91405<br><br>Pharmacy Technician Registration No. TCH 28751<br><br>Respondent. | Case No. 2954<br><br>**DEFAULT DECISION AND ORDER**<br><br>[Gov. Code, §11520] |

FINDINGS OF FACT

1. On or about May 18, 2006,Complainant Patricia F. Harris, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 2954 against Khoung K. Ton (Respondent) before the Board of Pharmacy.

2. On or about March 17, 1999, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 28751 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and expired on April 30, 2006. Pharmacy Technician Registration No. TCH 28751 is currently in delinquent status.

3. On or about May 31, 2006, MariaElena Hernandez, an employee of the Department of Justice, served by certified mail and by first class mail, a copy of Accusation No. 2954, Statement to Respondent, Notice of Defense, Request for Discovery, and Government

Code sections 11507.5, 11507.6, and 11507.7, to Respondent's address of record with the Board, which was and is 6866 Varna Ave., Van Nuys, CA 91405, as well as to the following address: 8582 Telfair, Sun Valley, CA 91352. A copy of the Accusation, related documents, and the Declaration of Service are attached hereto as Exhibit A and are incorporated herein by reference.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

5. On or about July 8, 2006, the aforementioned documents were returned by the U.S. Postal Service marked "Unclaimed." A copy of the postal return documents are attached hereto as Exhibit B, and are incorporated herein by reference.

6. Government Code section 11506 states, in pertinent part:

"(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

7. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2954.

8. California Government Code section 11520 states, in pertinent part:

"(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent."

9. Pursuant to its authority under Government Code section 11520, the Board finds that Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it contained in Exhibits A and B, finds that the allegations in Accusation No. 2954 are true.

10. The total costs for investigation and enforcement are $1,631.00 as of July 27, 2006.

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## DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Khoung K. Ton has subjected her Pharmacy Technician Registration No. TCH 28751 to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Accusation:

a. Business and Professions Code section 4300 and 4301(f), (j), and (o), Health and Safety Code section 11173(a): diverting controlled substances from employer for personal use.

b. Business and Professions Code sections 4300, 4301(j) and (o), and 4600: obtained controlled substances without a prescription.

c. Business and Professions Code sections 4300, 4301(j) and (o), Health and Safety Code section 11170: administered controlled substances to oneself.

d. Business and Professions Code sections 4300, 4301(q): failure to respond to Board investigation regarding the diversion of controlled substances.

e. Business and Professions Code sections 4300, 4301(o), and 4100: failure to notify Board of change of address of record.

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## DECISION AND ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 28751 heretofore issued to Respondent Khoung K. Ton is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on October 11, 2006.

It is so ORDERED September 11, 2006

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

60156719.wpd
DOJ docket number:LA2005601224

Attachments: Exhibit A: Accusation No.2954, Related Documents, and Declaration of Service
Exhibit B: Postal Return Documents

Exhibit A

Accusation No. 2954,
Related Documents and Declaration of Service

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**BEFORE THE**
**BOARD OF PHARMACY**
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| In the Matter of the Accusation Against:<br><br>KHOUNG K. TON<br>6866 Varna Ave.<br>Van Nuys, CA 91405<br><br>8582 Telfair<br>Sun Valley, CA 91352<br><br>Pharmacy Technician Registration<br>No. TCH 28751<br><br>Respondent. | Case No. 2954<br><br>**ACCUSATION** |

Complainant alleges:

PARTIES

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

2. On or about March 17, 1999, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 28751 to Khoung K. Ton (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2006, unless renewed.

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JURISDICTION

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

4. Section 4300 of the Code provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

5. Section 118, subdivision (b) states:

"The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending ore revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

6. 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:

. . . .

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

. . . .

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

. . . .

"(o) Violating or attempting to violate, directly or indirectly, or assisting in or

abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board.

. . . .

"(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board.

7. Section 4060 of the Code states:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished 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 assistant pursuant to Section 3502.1. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

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

8. Section 4100 of the Code states:

"(a) Within 30 days after changing his or her address of record with the board or after changing his or her name according to law, a pharmacist, intern pharmacist, technician, or designated representative shall notify the executive officer of the board of the change of address or change of name."

9. Section 11170 of the Health and Safety Code provides: "no person shall prescribe, administer, or furnish a controlled substance for himself."

10. Section 11173, subdivision (a) of the Health and Safety Code provides: "no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

11. Section 125.3 of the Code provides, 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.

12. CONTROLLED SUBSTANCES

a. "Lorcet," a brand name for a combination drug containing hydrocodone and acetaminophen, is a Schedule III controlled substance as defined in Health and Safety Code section 11056(e)(4) and is categorized as a dangerous drug pursuant section 4022 of the Code.

b. "Lortab," a brand name for hydrocodone and acetaminophen, is a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and is categorized as a dangerous drug pursuant to section 4022 of the Code.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Obtained Controlled Substances By Fraud or Deceit)

13. Respondent is subject to disciplinary action under sections 4300 and 4301 subdivisions (f), (j) and (o) of the Code on the grounds of unprofessional conduct for violating Health and Safety Code section 11173(a) in that Respondent obtained controlled substances by fraud, deceit, or misrepresentation. The circumstances are as follows:

a. On or about May 31, 2005, while employed as a pharmacist technician at Rancho Park Pharmacy (Pharmacy) in Los Angeles, California, Respondent was found to have in her possession two (2) 500 count containers of hydrocodone/acetaminophen10/500mg. (generic for Lortab), which previously had been determined to be missing from the pharmacy inventory.

b. On or about July 27, 2005, the Pharmacy reported to the Board Inspector its loss of two (2) bottles of 500 tablets of hydrocodone/acetaminophen10/500 mg. and six (6) bottles of 500 tablets of hydrocodone/acetaminophen 10/325 mg. On May 31, 2005, Respondent admitted to the pharmacist-in-charge that she had diverted the controlled substances from the Pharmacy. Respondent subsequently admitted that she diverted the drugs for her own personal use.

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SECOND CAUSE FOR DISCIPLINE

(Possession of Controlled Substances Without a Prescription)

14. Respondent is subject to disciplinary action under sections 4300 and 4301 subdivisions (j) and (o) of the Code for violating section 4060 in that Respondent obtained controlled substances without a prescription as more fully set forth above in paragraph 13 and incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(Administered Controlled Substances To Oneself)

15. Respondent is subject to disciplinary action under sections 4300 and 4301 subdivisions (j) and (o) of the Code for violating Health and Safety Code section 11170 in that Respondent diverted controlled substances from the Pharmacy for her own personal use, as more fully set forth above in paragraph 13 and incorporated herein by reference.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Respond to Investigation)

16. Respondent is subject to disciplinary action under sections 4300 and 4301 subdivision (q) of the Code in that Respondent failed to respond to inquiries made by the Board's Inspector with regard to the diversion of controlled substances. In July 2005, Respondent failed to respond to inquiries which were sent to both her address of record and to her address as provided by the Pharmacy.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Notify Board of Change of Address)

17. Respondent is subject to disciplinary action under sections 4300 and 4301 subdivision (o) of the Code for violating section 4100 in that Respondent failed to notify the Board within 30 days of her change of address of record. Respondent's address of record with the Board is 6866 Varna Avenue, Van Nuys, CA 91405. According to the Pharmacy, Respondent's last known employer, Respondent's address is as follows: 8582 Telfair, Sun Valley, CA 91352.

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## 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 No. TCH 28751 issued to Khoung K. Ton;

2. Ordering Khoung K. Ton 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: 5/18/06

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

Exhibit B

Postal Return Documents

Khoung K. TON
Acc. packet

**SENDER: *COMPLETE THIS SECTION***

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

**KHOUNG K. TON**
**8582 Telfair**
**Sun Valley, CA 91352**

***COMPLETE THIS SECTION ON DELIVERY***

A. Received by *(Please Print Clearly)* | B. Date of Delivery 6/12

C. Signature
X [signature] ☐ Agent ☐ Addressee

D. Is delivery address different from Item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)* 7001 0360 0003 2703 7496

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

**SENDER: *COMPLETE THIS SECTION***

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Khoung K. Ton
6866 Varna Ave.
Van Nuys, CA 91405

RETURNED TO SENDER
UNCLAIMED

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by *(Please Print Clearly)*
B. Date of Delivery

C. Signature
X
☐ Agent
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)* 7001 0360 0003 2703 7502

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

$ 05.36
MAY 31 2006
MAILED FROM ZIP CODE 90013

JAMI L. CANTORE
**DEPARTMENT OF JUSTICE**
Office of the Attorney General
300 South Spring Street
Los Angeles, California 90013

TO
Khoung K. Ton
6866 Varna Ave.
Van Nuys, CA 91405

RETURNED TO SENDER
UNCLAIMED

7001 0360 0003 2703 7502

N/C
6-1-06

NAME
1st Notice 6-2
2nd Notice 6-
Return