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6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2954

12 KHOUNG K. TON
6866 Varna Ave.
13 Van Nuys, CA 91405

**DEFAULT DECISION
AND ORDER**

14 Pharmacy Technician Registration No. TCH
28751

[Gov. Code, §11520]

15
16 Respondent.

17 FINDINGS OF FACT

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

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

26 3. On or about May 31, 2006, MariaElena Hernandez, an employee of the
27 Department of Justice, served by certified mail and by first class mail, a copy of Accusation No.
28 2954, Statement to Respondent, Notice of Defense, Request for Discovery, and Government

1 Code sections 11507.5, 11507.6, and 11507.7, to Respondent's address of record with the Board,
2 which was and is 6866 Varna Ave., Van Nuys, CA 91405, as well as to the following address:
3 8582 Telfair, Sun Valley, CA 91352. A copy of the Accusation, related documents, and the
4 Declaration of Service are attached hereto as Exhibit A and are incorporated herein by reference.

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

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

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

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

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

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

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

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

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

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DETERMINATION OF ISSUES

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

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

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

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

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

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

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

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

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

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1 DECISION AND ORDER

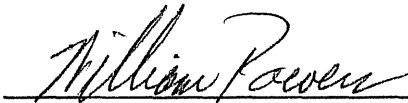
2 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 28751
3 heretofore issued to Respondent Khoung K. Ton is revoked.

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

9 This Decision shall become effective on October 11, 2006.

10 It is so ORDERED September 11, 2006

11
12 BOARD OF PHARMACY
13 DEPARTMENT OF CONSUMER AFFAIRS
14 STATE OF CALIFORNIA

15
16 By 
17 WILLIAM POWERS
18 Board President

19
20 60156719.wpd
21 DOJ docket number:LA2005601224

22 Attachments: Exhibit A: Accusation No.2954, Related Documents, and Declaration of
23 Exhibit B: Service
24 Postal Return Documents
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26
27
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Exhibit A
Accusation No. 2954,
Related Documents and Declaration of Service

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of the State of California
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7 **BEFORE THE**
8 **BOARD OF PHARMACY**
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11 In the Matter of the Accusation Against:

Case No. 2954

12 KHOUNG K. TON
6866 Varna Ave.
Van Nuys, CA 91405

13 8582 Telfair
Sun Valley, CA 91352

14 Pharmacy Technician Registration
15 No. TCH 28751

A C C U S A T I O N

16 Respondent.

17
18 Complainant alleges:

19 PARTIES

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

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

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JURISDICTION

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

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

7 5. Section 118, subdivision (b) states:

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

15 6. Section 4301 of the Code states:

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

20

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

24

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

27

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

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

4
5 "(q) Engaging in any conduct that subverts or attempts to subvert an investigation
6 of the board.

7 7. Section 4060 of the Code states:

8 "No person shall possess any controlled substance, except that furnished to a
9 person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished
10 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse
11 practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This
12 section shall not apply to the possession of any controlled substance by a manufacturer,
13 wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse
14 practitioner, or physician assistant, when in stock in containers correctly labeled with the name
15 and address of the supplier or producer.

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

18 8. Section 4100 of the Code states:

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

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

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

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

5 12. CONTROLLED SUBSTANCES

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

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

12 FIRST CAUSE FOR DISCIPLINE

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

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

18 a. On or about May 31, 2005, while employed as a pharmacist technician at
19 Rancho Park Pharmacy (Pharmacy) in Los Angeles, California, Respondent was found to have in
20 her possession two (2) 500 count containers of hydrocodone/acetaminophen 10/500mg. (generic
21 for Lortab), which previously had been determined to be missing from the pharmacy inventory.

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

Khounng K. Ton
Acc. packet

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">■ 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.	A. Received by (Please Print Clearly)	B. Date of Delivery 6/7
Article Addressed to: KHOUNG K. TON 8582 Telfair Sun Valley, CA 91352	C. Signature X <i>Khounng K. Ton</i>	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
	D. Is delivery address different from Item 1? If YES, enter delivery address below:	<input type="checkbox"/> Yes <input type="checkbox"/> No
1. Article Number (Copy from service label)	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
	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.

Article Addressed to:

Khongk Ton

6866 Varna Ave

Van Nuys, CA 91405

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
- Registered
- Insured Mail
- Express Mail
- Return Receipt for Merchandise
- 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

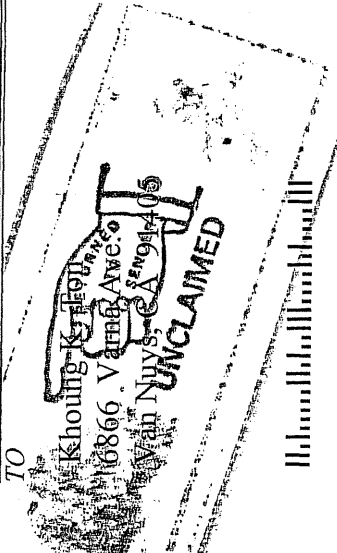
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7001 0360 0003 2703 7502

N/C
6-1-06

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



NAME
1st Notice
2nd Notice 2/9
Return 9-8

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MAY 31 2006
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