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

In the Matter of the Accusation Against:

MICHAEL QUOC BAU HO
1753 Cape Coral Drive
San Jose, CA 95133

Pharmacy Technician Registration
No. 20393

Respondent.

Case No. 4659

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about July 22, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4659 against Michael Quoc Bau Ho (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On or about October 2, 1996, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. 20393 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4659 and will expire on February 28, 2014, unless renewed.

1 3. On or about August 14, 2013, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 4659, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
5 section 4100, is required to be reported and maintained with the Board. Respondent's address of
6 record was and is: 1753 Cape Coral Drive, San Jose, CA 95133.

7 4. Service of the Accusation was effective as a matter of law under the provisions of
8 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
9 124.

10 5. On or about September 5, 2013, the aforementioned documents were returned by the
11 U.S. Postal Service marked "Addressee Unknown." The address on the documents was the same
12 as the address on file with the Board. Respondent failed to maintain an updated address with the
13 Board and the Board has made attempts to serve the Respondent at the address on file.
14 Respondent has not made himself available for service and therefore, has not availed himself of
15 his right to file a notice of defense and appear at hearing.

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

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

22 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
23 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
24 4659.

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

26 (a) If the respondent either fails to file a notice of defense or to appear at the
27 hearing, the agency may take action based upon the respondent's express admissions
28 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
Respondent is in default. The Board will take action without further hearing and, based on the

1 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
2 taking official notice of all the investigatory reports, exhibits and statements contained therein on
3 file at the Board's offices regarding the allegations contained in Accusation No. 4659, finds that
4 the charges and allegations in Accusation No. 4659, are separately and severally, found to be true
5 and correct by clear and convincing evidence.

6 10. Taking official notice of its own internal records, pursuant to Business and
7 Professions Code section 125.3, it is hereby determined that the reasonable costs for Prosecution
8 are \$2,407.50, and the reasonable costs for Investigation are \$2,677.50, bringing the total
9 reasonable costs of investigation and enforcement to \$5,085.00, as of November 20, 2013.

10 DETERMINATION OF ISSUES

11 1. Based on the foregoing findings of fact, Respondent Michael Quoc Bau Ho has
12 subjected his Pharmacy Technician Registration No. 20393 to discipline.

13 2. The agency has jurisdiction to adjudicate this case by default.

14 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
15 Registration based upon the following violations alleged in the Accusation which are supported
16 by the evidence contained in the Default Decision Evidence Packet in this case.:

17 a. Business and Professions Code (Code) sections 490 and 4301, subdivision (l),
18 (Conviction).

19 b. Code section 4059 (Furnishing Dangerous Drugs without Valid Prescription).

20 c. Code section 4060 (Illegal Possession of Controlled Substances).

21 d. Code section 4301, subdivision (f) (Unprofessional Conduct: Acts of Dishonesty and
22 Fraud).

23 e. Code section 4301, subdivision (j) (Violation of Statutes regarding Controlled
24 Substances).

25 f. Code section 4301, subdivision (q) (Subversion of Board Investigation).

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ORDER

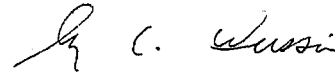
IT IS SO ORDERED that Pharmacy Technician Registration No. 20393, heretofore issued to Respondent Michael Quoc Bau Ho, is revoked.

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 February 24, 2014.

It is so ORDERED ON January 24, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STAN C. WEISSER
Board President

90360357.DOCX
DOJ Matter ID:SF2013901506

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 TIMOTHY J. McDONOUGH
Deputy Attorney General
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7 E-mail: Tim.McDonough@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 **MICHAEL QUOC BAU HO**
13 **1753 Cape Coral Drive**
14 **San Jose, CA 95133**
15 **Pharmacy Technician Registration No.**
20393
16 Respondent.

Case No. 4659

ACCUSATION

17
18
19 Complainant alleges:

20 PARTIES

- 21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
23 2. On or about October 2, 1996, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number 20393 to Michael Quoc Bau Ho (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought in this
26 Accusation and will expire on February 28, 2014, 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 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.

...

“(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 provides that “[t]he 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.”

STATUTES

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 any other state, or of the United States regulating controlled substances and dangerous drugs.

...

“(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.

3 ...
4 “(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the
5 board.”

6 7. Section 490 of the Code provides, in relevant part, that a board may suspend or
7 revoke a license on the ground that the licensee has been convicted of a crime substantially
8 related to the qualifications, functions, or duties of the business or profession for which the
9 license was issued.

10 8. Section 492 of the Code states:

11 “Notwithstanding any other provision of law, successful completion of any diversion
12 program under the Penal Code, or successful completion of an alcohol and drug problem
13 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
14 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
15 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
16 division, from taking disciplinary action against a licensee or from denying a license for
17 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
18 record pertaining to an arrest.

19 “This section shall not be construed to apply to any drug diversion program operated by any
20 agency established under Division 2 (commencing with Section 500) of this code, or any
21 initiative act referred to in that division.”

22 9. Section 493 of the Code states:

23 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
24 the department pursuant to law to deny an application for a license or to suspend or revoke a
25 license or otherwise take disciplinary action against a person who holds a license, upon the
26 ground that the applicant or the licensee has been convicted of a crime substantially related to the
27 qualifications, functions, and duties of the licensee in question, the record of conviction of the
28 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of the crime in
2 order to fix the degree of discipline or to determine if the conviction is substantially related to the
3 qualifications, functions, and duties of the licensee in question.

4 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
5 'registration.'"

6 10. Section 4059 of the Code states, in relevant part, that a person may not furnish any
7 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
8 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
9 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
10 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

11 11. Section 4060 of the Code states, in relevant part:

12 "No person shall possess any controlled substance, except that furnished to a person upon
13 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
14 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
15 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician
16 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
17 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the
18 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
19 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-
20 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled
21 with the name and address of the supplier or producer."

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

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

CONTROLLED SUBSTANCES/DANGEROUS DRUGS

1 13. Section 4021 of the Code states:

2 "Controlled substance' means any substance listed in Chapter 2 (commencing with Section
3 11053) of Division 10 of the Health and Safety Code."

4 14. Section 4022 of the Code states:

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

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

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

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

14 15. Health and Safety Code section 11352, subdivision (a), states:

15 "(a) Except as otherwise provided in this division, every person who transports, imports
16 into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this
17 state, sell, furnish, administer, or give away, or attempts to import into this state or transport (1)
18 any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision
19 (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section
20 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of
21 Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a
22 narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or
23 veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to
24 subdivision (h) of Section 1170 of the Penal Code for three, four, or five years."

25 16. Hydrocodone Bitartrate is a Schedule III controlled substance as designated by Health
26 and Safety Code section 11056, subdivision (e)(4), and a dangerous drug as designated by
27 Business and Professions Code section 4022.

28

1 17. Xanax is a brand name for Alprazolam, a Schedule IV controlled substance as
2 designated by Health and Safety Code section 11057, subdivision (d)(1), and a dangerous drug as
3 designated by Business and Professions Code section 4022.

4 COST RECOVERY

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

11 BACKGROUND

12 19. From on or about March 8, 2010 until September 2012, Respondent worked as a
13 pharmacy technician at South Valley Pharmacy Services (SVPS) in Gilroy, California.

14 20. On September 6, 2012, Respondent was arrested in San Jose, California. The arrest
15 was a result of an undercover drug investigation conducted by the Mountain View Police
16 Department (MVPD). On the morning of September 6, 2012, Respondent unwittingly called an
17 MVPD officer to arrange an illegal drug transaction. During this phone call Respondent agreed
18 to sell 1,100 Hydrocodone Bitartrate to the undercover officer for \$3,300 later that day. MVPD
19 officers arrested Respondent when he arrived at the pre-arranged sale location—"300 Bowling"—
20 a bowling alley in San Jose, California. At the time of the arrest, the officers searched
21 Respondent's car and found a sealed 1,000 tablet bottle of Hydrocodone Bitartrate and a second
22 sealed 100 tablet bottle of the same drug. Furthermore, the officers found \$600.00 of U.S.
23 currency near the driver side of the car.

24 21. After being transported to the MVPD station, Respondent admitted to dealing pills
25 (usually Norco) stolen from SVPS for about 3 months. Specifically, Respondent admitted that he
26 stole the 1,100 tablets of Hydrocodone Bitartrate from SVPS after unwittingly arranging to meet
27 with the MVPD officer. Respondent revealed that he stole the pills from SVPS because he knew
28 that the pharmacy only conducts yearly audits and would not notice the stolen drugs for a period

1 of time. Furthermore, Respondent admitted to the officers that he made a total of \$900 from
2 dealing the stolen pills in the past 3 months and that the \$600, found in his car, were proceeds
3 from selling Xanax.

4 22. MVPD initially charged Respondent with three felonies: 1) transporting, selling or
5 distributing a controlled substance (a violation of Health and Safety Code section 11352,
6 subdivision (a)), 2) possessing controlled substance for the purpose of selling (a violation of
7 Health and Safety Code section 11351) and 3) embezzling property of more than \$950.00 in value
8 (a violation of Penal Code section 504-487).

9 **FIRST CAUSE FOR DISCIPLINE**
10 **(Unprofessional Conduct: Substantially Related Conviction)**
11 **(Bus. & Prof Code §§ 490 & 4301, subd. (I))**

12 23. Respondent has subjected his Pharmacy Technician license to disciplinary action
13 under Code sections 490 and 4301, subdivision (I), in that he was convicted of a crime
14 substantially related to the qualifications, functions and duties of a pharmacy technician. The
15 circumstances are as follows:

16 24. On or about January 15, 2013, in a criminal matter entitled *The People of the State of*
17 *California v. Michael Bay Ho*, Santa Clara County Superior Court Case No. C1242008,
18 Respondent was convicted by a plea of nolo contendere for violating two felonies: Health &
19 Safety Code section 11352, subdivision (a), (transporting, selling, or distributing controlled
20 substances), and Penal Code section 504-487, (embezzlement by employee). The court dismissed
21 the charge of possession of controlled substance for the purpose of sale in the interest of justice.
22 The court sentenced Respondent to serve 1 year in county jail and 3 years of formal probation,
23 and ordered him to comply with other terms and conditions. The circumstances that support the
24 conviction are as described by paragraphs 19-22, above.

25 **SECOND CAUSE FOR DISCIPLINE**
26 **(Furnishing Dangerous Drugs w/o Valid Prescription)**
27 **(Bus. & Prof Code § 4059)**

28 25. Respondent has subjected his Pharmacy Technician license to disciplinary action
under Code section 4059, in that he furnished dangerous drugs (Hydrocodone Bitartrate &

1 Alprazolam) without a valid prescription. The circumstances are set forth in paragraphs 19-22,
2 above.

3 **THIRD CAUSE FOR DISCIPLINE**
4 **(Illegal Possession of Controlled Substances)**
5 **(Bus. & Prof Code § 4060)**

6 26. Respondent has subjected his Pharmacy Technician license to disciplinary action
7 under Code section 4060, in that he possessed controlled substance (Hydrocodone Bitartrate)
8 without a valid prescription. The circumstances are set forth in paragraphs 19-22, above.

9 **FOURTH CAUSE FOR DISCIPLINE**
10 **(Unprofessional Conduct: Acts of Dishonesty and Fraud)**
11 **(Bus. & Prof. Code § 4301, subd. (f))**

12 27. Respondent has subjected his Pharmacy Technician license to disciplinary action
13 under Code section 4301, subdivision (f), in that he acted dishonestly when he stole 1,100 tablets
14 of Hydrocodone Bitartrate while working as a pharmacy technician at SVPS. The circumstances
15 are set forth in paragraphs 19-22, above.

16 **FIFTH CAUSE FOR DISCIPLINE**
17 **(Violation of Statutes Regarding Controlled Substances)**
18 **(Bus. & Prof. Code § 4301, subd. (j))**

19 28. Respondent has subjected his Pharmacy Technician License to disciplinary action
20 under Code section 4301, subdivision (j), in that he sold controlled substances (Hydrocodone
21 Bitartrate) without a valid prescription. Such actions violate California Statutes relating to
22 controlled substances and dangerous drugs, including, but not limited to, Health and Safety Code
23 11352, subdivision (a). The circumstances are explained in paragraphs 19-22, above.

24 **SIXTH CAUSE FOR DISCIPLINE**
25 **(Subversion of Board Investigation)**
26 **(Bus. & Prof. Code § 4301 (q))**

27 29. Respondent has subjected his Pharmacy Technician License to disciplinary action
28 under Code section 4301, subdivision (q), in that he failed to comply with the Board's
investigation into the matters alleged in this Accusation. The circumstances are as follows:

30. On or about January 14, 2013, an inspector for the Board (inspector) sent a letter to
Respondent's address of record—1753 Cape Coral Drive in San Jose, California 95113—
requesting a meeting with him to discuss the incident of September 6, 2012. A second letter was

1 sent to Respondent at 2154 Commodore Dr., San Jose, California 95113 (an address provided by
2 SVSP) on January 24, 2013, requesting a meeting. The same letter was sent via email to
3 Respondent at an email address provided by SVSP. On or about February 1, 2013, the inspector
4 sent another letter to Respondent with a similar request. Finally, on or about February 5, 2013,
5 the inspector sent another letter via email to Respondent seeking a meeting in regards to the
6 incident on September 6, 2012. Respondent failed to respond to any of these three letters or the
7 two emails sent to him.

8 DISCIPLINE CONSIDERATIONS

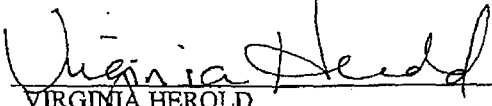
9 31. To determine the degree of discipline, if any, to be imposed on Respondent,
10 Complainant alleges that on or about December 22, 2004, in a prior action, the Board of
11 Pharmacy issued Citation Number CI 200327039 and ordered Respondent to pay a \$1,000 fine
12 for violating sections 1770 and 4301, subdivisions (f), (g), (l), and (p). That Citation is now final
13 and is incorporated by reference as if fully set forth.

14 PRAYER

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

- 17 1. Revoking or suspending Pharmacy Technician Registration Number 20393, issued to
18 Michael Quoc Bau Ho;
- 19 2. Ordering Michael Quoc Bau Ho to pay the Board of Pharmacy the reasonable costs of
20 the investigation and enforcement of this case, pursuant to Business and Professions Code section
21 125.3;
- 22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: 7/22/13

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

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