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

In the Matter of the Accusation Against:

Case No. 5183

CHIO KAUNG SAEPHAN

711 N. Santa Fe
Visalia, California 93292

**Pharmacy Technician Registration No. TCH
64424**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about December 3, 2014, Virginia K. Herold ("Complainant"), in her official capacity as the Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs, filed Accusation No. 5183 against Chio Kaung Saephan ("Respondent") before the Board. (Accusation attached as Exhibit A.)

2. On or about August 10, 2005, the Board issued Pharmacy Technician Registration No. TCH 64424 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5183 and will expire on June 30, 2015, unless renewed.

∥∥

1 3. On or about December 22, 2014, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 5183, 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:

7 711 N. Santa Fe
8 Visalia, California 93292.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
11 124.

12 5. No documents were returned by the U.S. Postal Service marked as undeliverable.

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

14 (c) The respondent shall be entitled to a hearing on the merits if the respondent
15 files a notice of defense, and the notice shall be deemed a specific denial of all parts
16 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.

17 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
18 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
19 5183.

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

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

24 9. Pursuant to its authority under Government Code section 11520, the Board finds
25 Respondent is in default. The Board will take action without further hearing and, based on the
26 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
27 taking official notice of all the investigatory reports, exhibits and statements contained therein on
28 file at the Board's offices regarding the allegations contained in Accusation No. 5183, finds that

1 the charges and allegations in Accusation No. 5183, are separately and severally, found to be true
2 and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
5 and Enforcement is \$2,996.50 as of February 11, 2015.

6 **DETERMINATION OF ISSUES**

7 1. Based on the foregoing findings of fact, Respondent Chio Kaung Saephan has
8 subjected his Pharmacy Technician Registration No. TCH 64424 to discipline.

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

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

13 a. Respondent is subject to disciplinary action pursuant to Business and Professions
14 Code ("Code") section 4301, subdivision (l), on the grounds of unprofessional conduct, in that
15 Respondent committed crimes substantially related to the qualifications, functions, and duties of a
16 licensed pharmacy technician. Specifically, on or about February 19, 2014, in a criminal
17 proceeding entitled *People v. Chio Kaung Saephan*, Tulare County Superior Court, Case No.
18 VCF288743, Respondent was convicted by the court on his plea of nolo contendere to violating
19 Penal Code section 487(a) (grand theft by embezzlement), a felony. The circumstances of the
20 crime are that on or about and between July 27, 2011, and June 16, 2013, while employed as a
21 pharmacy technician at CVS, Respondent took money and personal property exceeding \$950 in
22 value from CVS. Respondent admitted to CVS management that between in or around
23 September 2012 and June 2013, he took approximately 320 tablets of Norco and 200 tablets of
24 Xanax 2 mg. from CVS without permission or a valid prescription. Respondent also admitted
25 that during that same time period he self-administered Norco without a valid prescription.

26 b. Respondent is subject to disciplinary action pursuant to Code section 4301,
27 subdivision (f), on the grounds of unprofessional conduct, in that he committed acts involving
28

1 moral turpitude, dishonesty, fraud, deceit, and/or corruption. The facts and circumstances are set
2 forth in paragraph 3, subpart (a) above.

3 c. Respondent is subject to disciplinary action pursuant to Code section 4301,
4 subdivision (j), on the grounds of unprofessional conduct, in that while on duty as a registered
5 pharmacy technician at CVS, during, but not limited to, that period of time between in on or
6 around September 2012 and June 2013, Respondent violated statutes regulating controlled
7 substances and dangerous drugs, as follows:

8 i. **Health & Safety Code section 11173, subdivision (a)**: Respondent obtained
9 Norco and Xanax, controlled substances, by fraud, deceit, misrepresentation, or subterfuge, by
10 taking the drugs from CVS supplies. The facts and circumstances are set forth in paragraph 3,
11 subparts (a) and (b) above.

12 ii. **Health & Safety Code section 11170**: Respondent furnished and administered
13 to himself, Norco, a controlled substance. The facts and circumstances are set forth in paragraph
14 3, subparts (a) and (b) above.

15 iii. **Business and Professions Code section 4060**: Respondent had possession of
16 controlled substances, Norco and Xanax, without authorization or a valid prescription therefore.
17 The facts and circumstances are set forth in paragraph 3, subparts (a) and (b) above.

18 iv. **Business and Professions Code section 4059, subdivision (a)**: Respondent
19 furnished Norco and Xanax, dangerous drugs, to himself, without a prescription, from CVS
20 inventory. The facts and circumstances are set forth in paragraph 3, subparts (a) and (b) above.

21 d. Respondent is subject to disciplinary action pursuant to Code section 4301,
22 subdivision (o), on the grounds of unprofessional conduct, in that while on duty as a registered
23 pharmacy technician at CVS, Respondent violated or attempted to violate, directly or indirectly,
24 the laws of pharmacy. The facts and circumstances are set forth in paragraph 3, subparts (a)
25 through (c) above.

26 **ORDER**

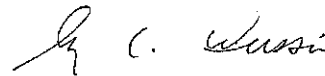
27 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 64424, heretofore
28 issued to Respondent Chio Kaung Saepfan, is revoked.

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

5 This decision shall become effective on April 10, 2015.

6 It is so ORDERED on March 11, 2015.

7 BOARD OF PHARMACY
8 DEPARTMENT OF CONSUMER AFFAIRS
9 STATE OF CALIFORNIA

10 

11 By _____

12 STAN C. WEISSER

13 Board President

14 11734748.DOC
15 DOJ Matter ID:SA2014115620

16 Attachment:
17 Exhibit A: Accusation
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Exhibit A

Accusation No. 5183

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 STEPHANIE ALAMO-LATIF
Deputy Attorney General
4 State Bar No. 283580
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Sacramento, CA 94244-2550
6 Telephone: (916) 327-6819
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **CHIO KAUNG SAEPHAN**
711 N. Santa Fe
13 Visalia, California 93292
14 **Pharmacy Technician**
Registration No. TCH 64424
15
16 Respondent.

Case No. 5183

A C C U S A T I O N

17 Virginia Herold ("Complainant") alleges:

18 **PARTIES**

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

21 **Pharmacy Technician Registration**

22 2. On or about August 10, 2005, the Board issued Pharmacy Technician Registration
23 Number TCH 64424 to Chio Kaung Saephan ("Respondent"). The pharmacy technician
24 registration was in full force and effect at all times relevant to the charges brought herein and will
25 expire on June 30, 2015, unless renewed.

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1 JURISDICTION

2 3. Business and Professions Code ("Code") section 4300 states, in pertinent part:

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

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

6 (1) Suspending judgment.

7 (2) Placing him or her upon probation.

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

9 (4) Revoking his or her license.

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

12 4. Code section 4300.1 states:

13 The expiration, cancellation, forfeiture, or suspension of a board-issued license
14 by operation of law or by order or decision of the board or a court of law, the
15 placement of a license on a retired status, or the voluntary surrender of a license by a
16 licensee shall not deprive the board of jurisdiction to commence or proceed with any
17 investigation of, or action or disciplinary proceeding against, the licensee or to render
18 a decision suspending or revoking the license.

17 STATUTORY PROVISIONS

18 5. Code section 4301 states, in pertinent part:

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

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

24 (h) The administering to oneself, of any controlled substance, or the use of any
25 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
26 dangerous or injurious to oneself, to a person holding a license under this chapter, or
27 to any other person or to the public, or to the extent that the use impairs the ability of
28 the person to conduct with safety to the public the practice authorized by the license.

(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.

28 ///

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

20 (e) Violating or attempting to violate, directly or indirectly, or assisting in or
21 abetting the violation of or conspiring to violate any provision or term of this chapter
22 or of the applicable federal and state laws and regulations governing pharmacy,
23 including regulations established by the board or by any other state or federal
24 regulatory agency

25 6. Code section 4022 states:

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

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

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

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

7. Code section 4059(a) states:

(a) A person may not furnish any dangerous drug, except upon the prescription
of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
pursuant to Section 3640.7. A person may not furnish any dangerous device, except
upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
naturopathic doctor pursuant to Section 3640.7.

8. Code section 4060 states, in pertinent part:

No person shall possess any controlled substance, except that furnished to a
person upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant

1 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
2 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
3 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.

4 9. Health and Safety ("H&S") Code section 11170 states, "No person shall prescribe,
5 administer, or furnish a controlled substance for himself."

6 10. Health and Safety Code section 11173(a), states:

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

10 COST RECOVERY

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

15 DRUGS

16 12. *Norco*, a brand name for acetaminophen and hydrocodone bitartrate, is a Schedule III
17 controlled substance pursuant to Health and Safety Code section 11056(e)(4), and a dangerous
18 drug pursuant to Business and Professions Code section 4022.

19 13. *Xanax*, a brand name for alprazolam, is a Schedule IV controlled substance pursuant
20 to Health and Safety Code section 11057(d)(1), and a dangerous drug pursuant to Business and
21 Professions Code section 4022.

22 BACKGROUND

23 14. Respondent was employed as a registered pharmacy technician at CVS Pharmacy
24 #2541, located at 1102 N. Demaree Street, Visalia, California ("CVS"), since approximately
25 2009.

26 15. On or about May 14, 2013, CVS found a discrepancy in its drug count. CVS
27 subsequently launched an investigation and on or about June 24, 2013, Respondent admitted to
28 CVS management that between in or around September 2012 and June 2013, he took

1 approximately 320 tablets of Norco and 200 tablets of Xanax 2 mg. from CVS without
2 permission or a valid prescription. Respondent admitted that during that same time period he
3 self-administered Norco without a valid prescription.

4 **FIRST CAUSE FOR DISCIPLINE**

5 (Criminal Conviction)

6 16. Respondent is subject to disciplinary action pursuant to Code section 4301,
7 subdivision (I), on the grounds of unprofessional conduct, in that Respondent committed crimes
8 substantially related to the qualifications, functions, and duties of a licensed pharmacy technician.
9 Specifically, on or about February 19, 2014, in a criminal proceeding entitled *People v. Chio*
10 *Kaung Saephan*, Tulare County Superior Court, Case No. VCF288743, Respondent was
11 convicted by the court on his plea of nolo contendere to violating Penal Code section 487(a)
12 (grand theft by embezzlement), a felony. The circumstances of the crime are that on or about and
13 between July 27, 2011, and June 16, 2013, while employed as a pharmacy technician at CVS,
14 Respondent took money and personal property exceeding \$950 in value from CVS.

15 **SECOND CAUSE FOR DISCIPLINE**

16 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

17 17. Respondent is subject to disciplinary action pursuant to Code section 4301,
18 subdivision (f), on the grounds of unprofessional conduct, in that he committed acts involving
19 moral turpitude, dishonesty, fraud, deceit, and/or corruption. The facts and circumstances are set
20 forth in paragraphs 14 through 16, above.

21 **THIRD CAUSE FOR DISCIPLINE**

22 (Violation of Statutes Regulating Controlled Substances)

23 18. Respondent is subject to disciplinary action pursuant to Code section 4301,
24 subdivision (j), on the grounds of unprofessional conduct, in that while on duty as a registered
25 pharmacy technician at CVS, during, but not limited to, that period of time between in on or
26 around September 2012 and June 2013, Respondent violated statutes regulating controlled
27 substances and dangerous drugs, as follows:
28

1 a. **Health & Safety Code section 11173, subdivision (a)**: Respondent obtained Norco
2 and Xanax, controlled substances, by fraud, deceit, misrepresentation, or subterfuge, by taking the
3 drugs from CVS supplies. The facts and circumstances are set forth in paragraphs 14 through 17,
4 above.

5 b. **Health & Safety Code section 11170**: Respondent furnished and administered to
6 himself, Norco, a controlled substance. The facts and circumstances are set forth in paragraphs
7 14 through 17, above.

8 c. **Business and Professions Code section 4060**: Respondent had possession of
9 controlled substances, Norco and Xanax, without authorization or a valid prescription therefore.
10 The facts and circumstances are set forth in paragraphs 14 through 17, above.

11 d. **Business and Professions Code section 4059, subdivision (a)**: Respondent
12 furnished Norco and Xanax, dangerous drugs, to himself, without a prescription, from CVS
13 inventory. The facts and circumstances are set forth in paragraphs 14 through 17, above.

14 **FOURTH CAUSE FOR DENIAL**

15 **(Violation of Pharmacy Law)**

16 19. Respondent is subject to disciplinary action pursuant to Code section 4301,
17 subdivision (o), on the grounds of unprofessional conduct, in that while on duty as a registered
18 pharmacy technician at CVS, Respondent violated or attempted to violate, directly or indirectly,
19 the laws of pharmacy. The facts and circumstances are set forth in paragraphs 14 through 18,
20 above.

21 **PRAYER**

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

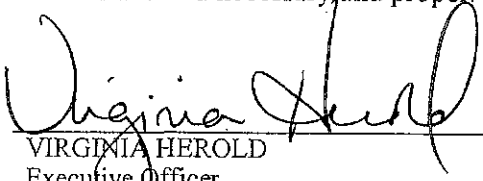
24 1. Revoking or suspending Pharmacy Technician Registration Number TCH 64424,
25 issued to Chio Kaung Saephan;

26 2. Ordering Chio Kaung Saephan to pay the Board of Pharmacy the reasonable costs of
27 the investigation and enforcement of this case, pursuant to Business and Professions Code section
28 125.3; and,

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3. Taking such other and further action as deemed necessary and proper.

DATED: 12/3/14



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

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