

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

In the Matter of the Accusation Against:

HUGH QUOCHUY NGUYEN,

Respondent.

Case No. 5405

OAH No. 2015050978

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on May 26, 2016.

It is so ORDERED on April 26, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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PROPOSED DECISION

John E. DeCure, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 1, 2016, in Los Angeles.

Kevin Rigley, Deputy Attorney General, represented Virginia K. Herold (Complainant), Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Hugh Quochuy Nguyen (Respondent) appeared on his own behalf.

Evidence was taken and argument was heard. The record was closed and the matter was submitted on March 1, 2016.

FACTUAL FINDINGS

Jurisdiction

1. Complainant filed the Accusation in her official capacity, alleging that Respondent: committed acts involving moral turpitude, dishonesty, fraud, deceit or corruption; administered controlled substances to himself; furnished to himself controlled substances; possessed controlled substances without a prescription; sold, dispensed or compounded drugs while under the influence of a dangerous drug; obtained controlled substances by fraud, deceit, subterfuge, or concealment of material fact; and by virtue of the previous allegations, engaged in unprofessional conduct. Respondent timely filed a notice of defense.

2. The Board issued Pharmacist License Number RPH 62556 to Respondent on July 23, 2009. The license expired on June 30, 2015. Pursuant to Business and Professions Code section 118, subdivision (b), the expiration and cancellation of Respondent's license does not deprive the Board of jurisdiction to proceed with this disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

Factual Basis for Allegations

3(a). At the administrative hearing, Complainant and Respondent stipulated on the record to the admission into evidence of the following factual basis for the allegations contained in the Accusation. That factual basis is set forth and numbered below as it appears verbatim in the Accusation:

(22.) Respondent, while employed as a licensed pharmacist at Simi Valley Hospital and Healthcare Service (SVHHS), admitted to diverting controlled drugs from the "expired Drug Bin" and consuming them during the time period of 5/21/2013 through 8/27/2014. The drugs he admitted to diverting and consuming were #12 Adderall 10mg, #1 Hydrocodone/ APAP 5-325, #1 MS Contin 60mg and #38 Temazepam.

(23.) Respondent was originally hired as a licensed pharmacist at SVHHS on 3/21/2013 to fill a newly created graveyard pharmacist position at that location. Respondent worked this shift seven (7) days on and seven (7) days off until 8/28/2014, when he took a Leave of Absence from SVHHS. There were no pharmacy technicians assigned to the graveyard shift with Respondent.

(24.) All controlled drugs at the SVHHS pharmacy were stored in a separate locked room referred to as the "Narcotic Vault." A paper perpetual inventory is maintained on all scheduled drugs. When an expired or unusable controlled drug is returned to the SVHHS pharmacy, it is logged into the "Expired Drug Bin" and is inventoried on a separate "paper log."

(25.) On or about 2/6/2014, EXP Pharmaceuticals came to SVHHS to retrieve their controlled drugs. At such time, an employee of EXP Pharmaceuticals identified that inside a bottle of Temazepam 15mg were #38 capsules which were not Temazepam 15mg. The Pharmacist-in-Charge (PIC) at SVHHS verified that all of the other expired controlled drugs were correct. However, the PIC suspected the Temazepam capsules may have been deliberately replaced, and thereby instructed the SVHHS daytime

pharmacy staff to begin counting and verifying what was in the expired drug log on an almost daily basis.

(26.) On 5/8/2014, methylphenidate 10mg #39 tablets were placed in the expired drug bin in the "Narcotic Vault" and logged into the expired drug inventory. On 5/20/14, staff pharmacists at SVHHS informed the PIC that they only counted #5 tablets in the bottle of methylphenidate 10mg. When the PIC counted the same methylphenidate 10mg bottle, she found that the quantity was correct but that #8 of the tablets were not methylphenidate 10mg, but rather atenolol 25mg Mylan brand. Only two pharmacists at SVHHS had access to the "Narcotic Vault" during that time period.

(27.) The PIC subsequently requested that a surveillance camera be placed in the "Narcotic Vault" and on 8/7/14, one was installed. Thereafter, the PIC regularly reviewed the video and on 8/27/2014, she observed Respondent (on video) accessing the expired controlled drug drawer. According to the PIC, it appeared as though Respondent had removed one tablet from the controlled drug drawer and placed it in his mouth. Thereafter, the PIC reviewed the controlled substance expired drug log and conducted an audit. In addition to the missing Temazepam, the PIC also discovered the following discrepancies: - 12 tablets of Adderall 10mg; - 1 tablet of Hydrocodone/APAP 5-325, and - 1 tablet of MS Contin 60mg. When the PIC then confronted Respondent with this evidence, Respondent admitted to diverting all these missing controlled drugs identified above. Respondent also admitted to the PIC at that time that he had a drug addiction problem and that he wished to receive professional help for this.

(28.) Thereafter, on or about August 28, 2014, Respondent personally called the company MAXIMUS to request to join the Pharmacist Recovery Program (PRP). During his initial telephonic intake with a MAXIMUS Clinical Case Manager ("A.M."), Respondent admitted to A.M. that he had recently been placed on a Leave of Absence by his employer, SVHHS, after he was caught on videotape diverting prescription medications at his workplace by his employer. Respondent specifically admitted to A.M. at that time that he had diverted from his workplace the prescription medications Adderall and Hydrocodone for his own use, and that he had also worked as a licensed pharmacist while under the influence of drugs.

(29.) Though Respondent did complete an initial portion of the PRP through MAXIMUS, he failed to successfully complete the entire program. As a result thereof, the Pharmacist Recovery Committee determined that Respondent's case with MAXIMUS should be closed as a "Public Risk" and referred the matter back to the Board for further action.

3(b). Dangerous drugs are drugs unsafe for self-use and require a prescription. Controlled substances require a prescription and, hence, are dangerous drugs. Controlled substances are substances listed in Chapter 2, commencing with section 11053, of the Health and Safety Code. Temazepam, a sedative/hypnotic, is a Schedule IV controlled substance. MS Contin, an extended release morphine sulfate, is a Schedule II controlled substance. Hydrocodone/APAP, an opioid pain medication, is a schedule III controlled substance. Adderall, an amphetamine or dextroamphetamine, is a Schedule II controlled substance.

4. Respondent's drug abuse began while he was assigned to work the graveyard shift at SVHHS. He developed a dependency on controlled substances when, in an effort to stay awake and energetic throughout his shift, he began to siphon away certain expired controlled substances from the pharmacy vault. Respondent was a candid witness who described his struggles with addiction without reservation.

5. The MAXIMUS program is a 30-day inpatient program. The day after Respondent successfully completed the program, he returned home and experienced drug cravings. To quell his cravings, he took methadone for which he had no prescription. The un-prescribed methadone he used was from a store of drugs he kept at home, a store he had built up while still working at SVHHS. The methadone he used was from an inventory of expired methadone he had taken from the SVHHS vault. That same day, MAXIMUS conducted random drug-testing on Respondent, which was part of an ongoing outpatient drug-recovery program of which Respondent was now a part. He failed the drug test due to the presence of methadone in his system. Respondent was totally unaware he would be randomly drug-tested that day. He also wrongly assumed that methadone, a drug used to wean addicts from opium, was forbidden by the program. "I was really stupid," he admitted.

6. The Board recommended that Respondent enroll in another inpatient drug-abuse recovery program, either through Promises in West Los Angeles, or the Betty Ford Clinic, in Palm Springs. Respondent contacted both programs and found that they cost approximately \$30,000 per month, which his insurance would not cover and which he could not afford. As a result of his failure to enroll, MAXIMUS expelled him from its program. After that, Respondent participated in an outpatient program through Glendale Adventist Church (Glendale), from approximately October 2014 until August 2015. He attended Alcoholics Anonymous/Narcotics Anonymous (AA/NA) meetings and got a sponsor. He was depressed and continued to battle the urge to take opioids by ingesting methadone from his store of expired methadone taken from SVHHS. His

frequency of methadone use was once per week, tapering down to once every two weeks, to combat the urge to use opioids. His sponsor knew about his methadone use and warned him to stop taking it.

7. Respondent knew his methadone use, without a prescription, was illegal. He did not reveal to Glendale that he was taking methadone. In time he stopped relying on his sponsor because he felt a sponsor was not helpful towards his goal of sobriety. He stopped attending AA/NA meetings in October 2015 because he was "too busy" with new studies and coursework he has taken toward becoming a laboratory scientist. He left Glendale without asking for, or receiving, any certificates of completion or written records from the program regarding his participation.

Additional Evidence

8. Respondent stopped using illicit, un-prescribed drugs in September 2015. To prove he was drug free, he submitted negative results of random drug tests he had his physician administer to him on February 2, 8, 18, and 24, 2016. (Exhibits B, C.) Respondent hopes the Board will give him a second chance. He promised that if he is granted probation, he will comply fully with any terms and conditions of probation the Board may impose.

9. Respondent's mother submitted a character reference letter on Respondent's behalf. She described Respondent as a good son, a good new father to his baby, and a good husband to his wife. She confirmed Respondent's current sobriety and attested that he is deeply remorseful for his wrongdoing.

10. Katherine Sill, a licensed pharmacist in California and a Board of Pharmacy Inspector since 2011 (Inspector Sill), testified credibly at the administrative hearing about the investigation she performed in this case and gave her expert opinion regarding whether Respondent's convictions are substantially related to the qualifications, functions and duties of a pharmacist. Regarding a pharmacist's duties, Inspector Sill stated a pharmacist can perform all pharmacy work without supervision and will often be expected to work alone, so the level of responsibility is high. Because the work of a pharmacist involves dispensing controlled substances to medical patients, storing and inventorying drugs, and preparing prescriptions, the pharmacist must be moral, ethical, use excellent judgment, and display the reliability of a professional person dedicated to patient care. Inspector Sill opined that Respondent's convictions are significantly and directly related to his responsibilities as a pharmacist because public protection is paramount to the Board, and a pharmacist who is practicing while under the influence of non-prescribed controlled substances cannot possibly exercise the sound judgment required to fulfill his duties, especially when preparing prescriptions for powerful drugs. Pharmacists have access to dangerous drugs and controlled substances and must store, compound, and dispense drugs with total accuracy. The potential for mistakes under such circumstances is profound, and if the pharmacist dispensed the wrong drugs or dosages, there could be dire consequences for the patient. Respondent's

actions were irresponsible and displayed a disturbing lack of judgment, thereby raising a serious issue of public protection. Due to his proximity to drug inventories as a pharmacist, his ongoing struggles with addiction represent a serious danger to himself and the public.

11. Respondent is taking courses in chemistry and physics at East Los Angeles College because he is interested in becoming a clinical laboratory scientist. He currently works in a new check-cashing business venture with a friend but has yet to realize any income or profits.

Cost of Enforcement

12. The Board incurred enforcement costs, in the form of Attorney General fees, in the amount of \$9,167.50. Those costs were reasonably incurred.

13. Respondent testified credibly that paying full costs would be a financial hardship, in view of his self-employment and the fact that he is currently not yet earning any income from it.

LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code section 4301, subdivision (f), on the grounds that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, as set forth in Factual Findings 3, 4 and 5. Respondent's multiple thefts of drugs from his pharmacy's inventory were dishonest, deceitful acts.

2. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code sections 4301, subdivision (h), and 4301, subdivision (j), and Health and Safety Code section 11170, on the grounds that Respondent administered controlled substances to himself, as set forth in Factual Findings 3, 4 and 5.

3. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code sections 4301, subdivisions (j) and (o), and 4059, and Health and Safety Code section 11170, on the grounds that Respondent furnished controlled substances to himself without a prescription, as set forth in Factual Findings 3, 4 and 5.

4. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code sections 4301, subdivisions (j) and (o), and 4060, and Health and Safety Code section 11350, on the grounds that Respondent possessed controlled substances without a prescription, as set forth in Factual Findings 3, 4 and 5.

5. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code sections 4301, subdivisions (j) and (o), and 4327, on the grounds that

Respondent sold, dispensed or compounded drugs while under the influence of dangerous drugs (controlled substances), as set forth in Factual Findings 3 and 4.

6. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code sections 4301, subdivisions (j) and (o), and Health and Safety Code section 11173, subdivision (a), on the grounds that Respondent obtained controlled substances by deceit, as set forth in Factual Findings 3, 4 and 5, and Legal Conclusion 1.

7. Cause exists to discipline Respondent's pharmacist license under Business and Professions Code section 4301 on the grounds that Respondent engaged in unprofessional conduct, as set forth in Factual Findings 3, 4 and 5.

The Standard of Proof

8. The practice of pharmacy, like the practice of medicine, is a profession. *Vermont & 110th Medical Arts Pharmacy v. Board of Pharmacy* (1981) 125 Cal.App.3d 19, 25. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a professional license is "clear and convincing evidence." *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.

9. The key element of "clear and convincing evidence" is that it must establish a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. Evidence of a charge is clear and convincing so long as there is a "high probability" that the charge is true. *People v. Mabini* (2001) 92 Cal.App.4th 654, 662.

10. The Board met its burden of proving its case by clear and convincing evidence.

Applicable Authority

11. Business and Professions Code section 4301 provides that the Board may take action against a licensee for unprofessional conduct, which includes: the commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption (subd. (f)); the use of controlled substances to the extent or in a manner as to be dangerous or injurious to oneself or any other person or to the public (subd. (h)); the violation of any statutes of this state, or any other state, or of the United States regulating controlled substances (subd. (j)); and violating or attempting to violate, directly or indirectly, any provision or term of the Pharmacy Law (subd. (o)).

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

"For the purpose of denial, suspension, or revocation of a personal . . . license . . . a crime or act shall be considered substantially related to the qualifications, functions, or duties of a licensee . . . if to a substantial degree it evidences present or potential unfitness of a licensee to perform the functions authorized by his license . . . in a manner consistent with the public, health, safety, or welfare."

13. Code section 4059 prohibits furnishing any dangerous drugs without an authorized prescription. Code section 4060 prohibits the possession of controlled substances without a prescription. Code section 4327 makes it unlawful to sell, dispense, or compound any drug while under the influence of any dangerous drug.

14. Health and Safety Code section 11170 prohibits the self-prescription or self-administration of controlled substances. Health and Safety Code section 11173, subdivision (a), prohibits the procurement or obtainment of controlled substances by fraud, deceit, misrepresentation or subterfuge, or by concealment of a material fact. Health and Safety Code section 11350 makes it unlawful to possess Schedule II, III, or IV (see Health and Safety Code § 11055) controlled substances absent a valid prescription.

15. Business and Professions Code section 125.3 provides that the Board may request an administrative law judge to direct a licentiate found to have violated the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement. Complainant is entitled to the recover reasonable costs of the investigation and prosecution of this matter in the amount of \$9,167.50, as set forth in Factual Finding 12.

16. Respect for human life and compliance with the law are paramount for pharmacists, who have access to dangerous drugs and controlled substances and must store, compound, and dispense drugs with total accuracy. Respondent's behavior evidences an unfitness to perform the functions of a pharmacist in a manner consistent with the public health, safety, and welfare. His multiple thefts of controlled substances from his employer for self-use, and his admitted use of those drugs on the job while carrying out his duties, demonstrate a lack of respect for human welfare and speak to the depth of his addiction. Although Respondent was admirably transparent in his testimony, he admitted to a long period of illicit drug use to contain his cravings for opiates. By his own estimate he has struggled with his rehabilitation process and has yet to complete a single drug rehabilitation program. By his own estimate he has only been drug free since last fall, which is insufficient to establish a substantial track record of sobriety. He will require more time, and possibly more counseling, support and intervention, to overcome his drug addiction, which is plainly serious and threatening to both Respondent and the public safety.

Analysis to Determine Penalty

17. The Board's Disciplinary Guidelines state that in determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, the following applicable factors should be considered (each factor is accompanied by a corresponding analysis):

1. Actual or potential harm to the public. No actual harm to the public was alleged. The potential harm to the public was that

Respondent, practicing pharmacy while under the influence, could have mishandled prescriptions, endangering the public.

2. Actual or potential harm to any consumer. No actual harm to a consumer was alleged. The potential harm to patients was that Respondent, practicing pharmacy while under the influence, could have, and may actually have, mishandled their prescriptions.

3. Prior disciplinary record, including level of compliance with disciplinary order(s). Respondent has no prior disciplinary record.

5. Number and/or variety of current violations. Respondent's misconduct represented seven violations of the Pharmacy Law, all of which stemmed from his theft of drugs and self-use of those drugs while at work.

6. Nature and severity of the act(s), offense(s) or crime(s) under consideration. Respondent's multiple thefts of controlled substances from his employer and his subsequent self-use while working as a pharmacist are serious violations of the Pharmacy Law.

7. Aggravating evidence. The evidence did not give rise to aggravating circumstances.

8. Mitigating evidence. Respondent's mother submitted a letter attesting to Respondent's good character.

9. Rehabilitation evidence. Respondent was a candid, cooperative witness and expressed sincere remorse for his misconduct. Respondent has randomly drug-tested through his own physician to show he is no longer using illicit drugs.

13. Time passed since the act(s) or offense(s). The misconduct occurred between two and three years ago.

14. Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct.

Respondent's conduct was intentional, as he meant to and did in fact steal and ingest controlled substances. It also may have been negligent in that he was responsible for ensuring the legitimacy and correctness of the prescriptions he was filling, but he could not perform these duties safely while under the influence of controlled substances.

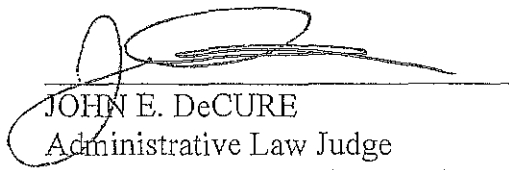
18. Considering all of these factors, Respondent committed serious misconduct due to his multiple thefts of controlled substance and his consuming them while on duty as a pharmacist. Respondent's culpability was attenuated, however, by his insight into his misconduct, his willingness to take responsibility, and his cooperation with the Board. Nonetheless, his rehabilitation from drug addiction is ongoing, as he failed to complete the Board's drug rehabilitation program and secretly self-medicated with stolen drugs while involved in a subsequent treatment program. He has yet to complete a drug rehabilitation program and has been drug free for only several months. Under the circumstances, his continued practice as a pharmacist represents a danger to patients, the public, and even himself, as the proximity to a drug inventory may be sorely tempting to a recovering addict. The following order will best achieve the Board's primary mission of public protection.

ORDER

1. Pharmacist License Number RPH 62556, issued to Respondent Hugh Quochuy Nguyen, is hereby revoked.

2. If Respondent later applies for a new pharmacy license or reinstatement of his revoked license, Respondent shall reimburse the Board \$9,167.50 for its prosecution and investigation costs in this case, prior to reinstatement or issuance of any pharmacist license, and in accordance with a Board-approved payment plan, or as the Board in its discretion may otherwise order.

DATED: April 1, 2016,


JOHN E. DeCURE
Administrative Law Judge
Office of Administrative Hearings

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7

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

11 In the Matter of the Accusation Against:	Case No. 5405
12 HUGH QUOCHUY NGUYEN 1853 E. Orange Grove Blvd. 13 Pasadena, CA 91104	ACCUSATION
14	
15 Pharmacist License No. RPH 62556	
16	
17 Respondent.	

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 July 23, 2009, the Board issued Pharmacist License No. RPH 62556
24 (license) to Hugh Quochuy Nguyen (Respondent). The pharmacist license was in full force and
25 effect at all times relevant to the charges brought herein and will expire on June 30, 2015, unless
26 renewed.

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28 ///

1 JURISDICTION

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

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

8 5. Section 4300(a) of the Code provides that every license issued by the Board may be
9 suspended or revoked.

10 6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or
11 suspension of a Board-issued license, the placement of a license on a retired status, or the
12 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
13 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
14 licensee or to render a decision suspending or revoking the license.

15 STATUTORY AND REGULATORY PROVISIONS

16 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
17 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
18 not be limited to, any of the following:

19 ...

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

23 ...

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

1 ...
2 "(j) The violation of any of the statutes of this state, of any other state, or of the United
3 States regulating controlled substances and dangerous drugs.

4 ...
5 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
6 violation of or conspiring to violate any provision or term of this chapter or of the applicable
7 federal and state laws and regulations governing pharmacy, including regulations established by
8 the board or by any other state or federal regulatory agency."

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

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

16 9. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
17 drug or dangerous device except upon the prescription of an authorized prescriber.

18 10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
19 controlled substance, except that furnished upon a valid prescription/drug order.

20 11. Section 4327 of the Code, in pertinent part, makes it unlawful, while on duty, to sell,
21 dispense or compound any drug while under the influence of any dangerous drug.

22 12. Health and Safety Code section 11170 provides that no person shall prescribe,
23 administer, or furnish a controlled substance for himself or herself.

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

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1 14. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
2 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
3 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

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

7 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

8 16. Section 4021 of the Code states:

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

11 17. Section 4022 of the Code states, in pertinent part:

12 "Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use,
13 except veterinary drugs that are labeled as such, and includes the following:

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

16 ...
17 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
18 prescription or furnished pursuant to Section 4006."

19 18. "Temazepam", in a class of sedative/hypnotics, is a Schedule IV controlled substance
20 pursuant to Health and Safety Code section 11057(d)(29) and a dangerous drug pursuant to
21 Business and Professions Code section 4022.

22 19. "MS Contin", a brand name for extended release morphine sulfate, is a Schedule II
23 controlled substance pursuant to Health and Safety Code section 11055(b)(1)(M) and a dangerous
24 drug pursuant to Business and Professions Code section 4022.

25 20. "Hydrocodone/APAP" is a schedule III controlled substance pursuant to Health and
26 Safety Code section 11056(e)(4), and are categorized as dangerous drugs pursuant to section
27 4022.

28 ///

1 the quantity was correct but that #8 of the tablets were not methylphenidate 10mg, but rather
2 atenolol 25mg Mylan brand. Only two pharmacists at SVHHS had access to the "Narcotic Vault"
3 during that time period.

4 27. The PIC subsequently requested that a surveillance camera be placed in the "Narcotic
5 Vault" and on 8/7/14, one was installed. Thereafter, the PIC regularly reviewed the video and on
6 8/27/2014, she observed Respondent (on video) accessing the expired controlled drug drawer.
7 According to the PIC, it appeared as though Respondent had removed one tablet from the
8 controlled drug drawer and placed it into his mouth. Thereafter, the PIC reviewed the controlled
9 substance expired drug log and conducted an audit. In addition to the missing Temazepam, the
10 PIC also discovered the following discrepancies: -12 tablets of Adderall 10mg, -1 tablet of
11 Hydrocodone/APAP 5-325, and -1 tablet of MS Contin 60mg. When the PIC then confronted
12 Respondent with this evidence, Respondent admitted to diverting all these missing controlled
13 drugs identified above. Respondent also admitted to the PIC at that time that he had a drug
14 addiction problem and that he wished to receive professional help for this.

15 28. Thereafter, on or about August 28, 2014, Respondent personally called the company
16 MAXIMUS to request to join the Pharmacist Recovery Program (PRP). During his initial
17 telephonic intake with a MAXIMUS Clinical Case Manager ("A.M."), Respondent admitted to
18 A.M. that he had recently been placed on a Leave of Absence by his employer, SVHHS, after he
19 was caught on videotape diverting prescription medications at his workplace by his employer.
20 Respondent specifically admitted to A.M. at that time that he had diverted from his workplace the
21 prescription medications Adderall and Hydrocodone for his own use, and that he had also worked
22 as a licensed pharmacist while under the influence of drugs.

23 29. Though Respondent did complete an initial portion of the PRP through MAXIMUS,
24 he failed to successfully complete the entire program. As a result thereof, the Pharmacist
25 Recovery Committee determined that Respondent's case with MAXIMUS should be closed as a
26 "Public Risk" and referred the matter back to the Board for further action.

27 ///

28 ///

1 FIRST CAUSE FOR DISCIPLINE

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

3 30. Respondent is subject to discipline under section 4301(f) of the Code in that
4 Respondent, as described in paragraphs 22 to 29 above, committed numerous acts involving
5 moral turpitude, dishonesty, fraud, deceit, or corruption.

6 SECOND CAUSE FOR DISCIPLINE

7 (Self-Administration of Controlled Substances)

8 31. Respondent is subject to discipline under section 4301(h) of the Code, and/or 4301(j)
9 and/or (o) of the Code and Health and Safety Code section 11170, in that Respondent, as
10 described in paragraphs 22 to 29 above, administered controlled substances to himself.

11 THIRD CAUSE FOR DISCIPLINE

12 (Furnishing of Controlled Substances)

13 32. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
14 4059 of the Code, and/or Health and Safety Code section 11170 in that Respondent, as described
15 in paragraphs 22 to 29 above, furnished to himself or another without a valid prescription, and/or
16 conspired to furnish, and/or assisted or abetted furnishing of, controlled substances.

17 FOURTH CAUSE FOR DISCIPLINE

18 (Possession of Controlled Substances)

19 33. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
20 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
21 in paragraphs 22 to 29 above, possessed, conspired to possess, and/or assisted in or abetted
22 possession of, controlled substances, without a prescription.

23 FIFTH CAUSE FOR DISCIPLINE

24 (Selling, Dispensing, or Compounding While Under the Influence)

25 34. Respondent is subject to disciplinary action under section 4301(j) and/or (o) and/or
26 section 4327 of the Code, in that Respondent, as described in paragraphs 22 to 29 above, sold,
27 dispensed or compounded drug(s) while under the influence of a dangerous drug, and/or directly
28 or indirectly attempted, conspired, and/or assisted in or abetted such conduct.

1 SIXTH CAUSE FOR DISCIPLINE

2 (Obtaining Controlled Substances by Fraud, Deceit or Subterfuge)

3 35. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
4 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
5 22 to 29 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of
6 controlled substances, by fraud, deceit, subterfuge, or concealment of material fact.

7 SEVENTH CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct)

9 36. Respondent is subject to discipline under section 4301 of the Code in that
10 Respondent, as described in paragraphs 22 to 35 above, engaged in unprofessional conduct.

11 DISCIPLINARY CONSIDERATION

12 37. Though Respondent did complete an initial portion of the Pharmacy Recovery
13 Program through MAXIMUS, he failed to successfully complete the entire program. As a result
14 thereof, the Pharmacist Recovery Committee determined that Respondent's case with MAXIMUS
15 should be closed as a "Public Risk" and referred the matter back to the Board for further action.

16 PRAYER

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

- 19 1. Revoking or suspending Pharmacist License Number RPH 62556, issued to Hugh
- 20 Quochuy Nguyen (Respondent);
- 21 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
- 22 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 23 3. Taking such other and further action as is deemed necessary and proper.

24 DATED: 5/6/15

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