

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

In the Matter of the Accusation Against:

**TRILBY TRANG NGUYEN**

Pharmacist License No. RPH 51807,

Respondent.

Case No. 5497

OAH No. 2016010487

**DECISION AND ORDER**

The Proposed Decision of the administrative law judge, dated October 27, 2016, in this matter was submitted to the California State Board of Pharmacy (Board). After considering the Proposed Decision, it is hereby rejected. The Accusation in this matter, as amended, is hereby dismissed.

This Decision shall become effective at 5:00 p.m. on March 9, 2017.

It is so ORDERED on February 7, 2017.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_

Amy Gutierrez, Pharm.D.  
Board President

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**PROPOSED DECISION**

Administrative Law Judge Regina Brown, State of California, Office of Administrative Hearings, heard this matter on July 7, 2016, in Oakland, California.

Joshua A. Room, Supervising Deputy Attorney General, represented complainant Virginia Herold, Executive Officer.

Adam J. Richards, Attorney at Law, Rothschild Wishek & Sands, LLP, represented respondent Trilby Trang Nguyen, who was present.

The record remained open to allow the parties to file written closing argument. Complainant's closing brief (marked as Exhibit 9), and respondent's closing brief (marked as Exhibit I) were filed on August 19, 2016. Within its closing brief, complainant requested to amend the Accusation to conform to proof to add a fourth cause for discipline, dishonesty, in violation of Business and Professions Code section 4301, subdivision (f). An Order granting complainant's request to amend the Accusation (marked for identification as Exhibit 10) was issued on September 9, 2016. On September 19, 2016, respondent submitted a letter (marked for identification as Exhibit J) requesting an opportunity to submit additional documents and argument in defense of the fourth cause for discipline. On September 23, 2016, an Order (marked for identification as Exhibit 11) was issued granting respondent leave to file and serve additional documents and written argument on or before October 7, 2016, and for complainant to respond on or before October 14, 2016. On October 7, 2016, respondent filed additional evidence and argument (marked for identification as Exhibit K). There was no response filed by complainant by close of business October 14, 2016. Exhibit K was admitted into evidence as administrative hearsay.

The matter was submitted on October 14, 2016.

## FACTUAL FINDINGS

1. Complainant Virginia Herold, made the Amended Accusation in her official capacity as Executive Officer of the Board of Pharmacy (board), Department of Consumer Affairs. Complainant alleges that discipline should be taken against respondent's pharmacist license because she has a conviction, she engaged in unprofessional conduct, and she misused her education.

2. On August 29, 2000, the board issued Pharmacist License number RPH 51807 to respondent Trilby Trang Nguyen. The license will expire on October 31, 2017, unless renewed.

3. On January 13, 2015, respondent was convicted in the Superior Court of California, County of Santa Clara, on her plea of no contest to a violation of Penal Code section 273a, subdivision (a) (willful abuse/endangerment of a child), a misdemeanor. Imposition of sentence was suspended and respondent was placed on formal probation for four years on the conditions that she perform 100 hours of volunteer work, complete a one-year parenting program, obey a domestic violence protection order until January 13, 2019, not use corporal punishment in the disciplining of children, obey all laws, and pay fines and fees.

4. The facts and circumstances leading to this conviction are that on July 4, 2012, respondent's nine-month-old son was admitted to the hospital and x-rays revealed a brain hemorrhage. The hospital social worker made a report of possible child abuse. On July 7, 2012, San Jose Police officers responded to the hospital. Respondent spoke to one of the officers. Respondent stated that her son had had seizures in the past. She stated that she had found out that day, at the hospital, that her son had fallen off a bed while sleeping, on June 24, 2012, while under the care of her mother (his maternal grandmother). He had no apparent injuries and was not taken to the hospital. On July 2, 2012, her son was vomiting and had trouble breathing. He was transported to the hospital, but he was released. On July 4, 2012, he started vomiting again and appeared lethargic. She took him to the hospital where the brain hemorrhage was discovered, but the doctors could not tell if it was from the fall or the seizures. Respondent did not mention that her son had any other falls. By July 10, 2012, the Santa Clara County Department of Family and Children's Services (DFCS) had initiated steps to remove him from respondent's custody. He was released from the hospital on July 15, 2012.

5. San Jose Police Detective Stanley McFadden was assigned to investigate the matter. On July 17, 2012, Det. McFadden spoke to Santa Clara County Child Abuse Injury Expert Catherine Albin, M.D. According to Det. McFadden's report, "Dr. Albin was greatly concerned when she was told by the mother [at the hospital] that she had administered Phenergan to the victim for the nausea and vomiting." Dr. Albin also discussed the side effects that can occur when a child that age has been administered Phenergan.

6. On July 17, 2012, Det. McFadden contacted respondent on the telephone. Respondent told him that the baby had fallen once with her mother and four times with her. These falls occurred between the end of May and the end of June 2012. Det. McFadden also obtained information from DFCS regarding the social worker's interview of respondent's father, Hong Nguyen, who is also a licensed pharmacist. Hong Nguyen said that he observed his grandson vomiting on July 4, 2012, and he "panicked" and administered a half of a Phenergan [an anti-emetic] suppository to stop him from vomiting. Hong Nguyen had obtained the medication from his pharmacy without a prescription.

7. On July 19, 2012, Sgt. McFadden interviewed respondent in her home. She described the four incidents involving her son, as follows:

- a. In May 2012, he fell off the bed onto the floor in the master bedroom;
- b. During the first week of June 2012, his head struck a table as he fell onto the floor of his bedroom. After this fall, she had metal bed rails with mesh material installed on her bed;
- c. Near the end of June 2012, she found him wedged between the mattress and a guard rail; and,
- d. At the end of June 2012, she found him wedged between the bedframe and a night stand table.

8. Det. McFadden had respondent to perform a reenactment of the four incidents with a doll. Det. McFadden told respondent that the guard rail and mattress were firmly connected and it would be difficult for a small baby to lodge himself head first in between them. He also stated that he had a hard time believing that a baby that young had made the movements on the bed as she described. Det. McFadden asked respondent about the following: "Dr. Albin told him that respondent had administered Phenergan to the baby, and the social worker told him that respondent's father had administered Phenergan to the baby." Respondent responded that she "did not tell the doctor the truth." Also, respondent stated that she told this to the doctor "because she was the baby's mother and did not want to involve anyone else. She felt responsible." She told Det. McFadden that her father did indeed administer a half pill of Phenergan to her son. In a follow-up interview on October 8, 2012, respondent changed her statement and said that she told the doctor that Phenergan "had been administered" to her son without disclosing who had administered the drug.

9. During the course of his investigation, Det. McFadden also interviewed the hospital social worker, the child's father, the paternal uncle, and the child's former daycare provider. Sgt. McFadden concluded that respondent had caused or permitted her son to be endangered. In November 2012, he sought an arrest warrant for respondent. The District Attorney of Santa Clara County filed a criminal action against respondent. The criminal matter was not resolved until January 2015.

10. On January 13, 2015, respondent pled no contest after the Superior Court judge asked respondent the following:

Then what is your plea to the charge in Count 2 as amended that on or about and between May 14th 2012 and July 4th 2012 in the County of Santa Clara, State of California the crime of endangering the health of a child in violation of Penal Code section 273a(a) a misdemeanor was committed by you while having care and custody, who did under circumstances and conditions likely to produce great harm and death, willfully permit a child, John Doe, age 9 months old, to be placed in a situation where his person and health were endangered by placing the child in an unsafe sleeping environment.

11. Sgt. McFadden credibly testified at hearing about the statements that respondent made during his interviews of her. Respondent did not indicate, during her interviews, that she was not aware beforehand or present when her father administered the Phenergan to her son.

12. Denise Dukatz, Pharm.D., is a licensed pharmacist and received her degree from the University of California, San Francisco, in 1994. Since December 2014, she has worked for the board as a pharmacist inspector. Her duties include inspecting pharmacies, performing investigations, and writing reports.

Dukatz's testimony at hearing was credible. She is familiar with the functions and duties of a licensed pharmacist. According to Dukatz, a pharmacist is an expert in dispensing medications to best treat patients. A pharmacist is expected to exhibit trustworthiness, be knowledgeable about the profession, be law abiding, and be accurate and meticulous in documentation. Good professional judgment and emotional stability are necessary components for the job of a pharmacist. The practice of a pharmacist requires that a physician prescribe a drug and the pharmacist fill the prescription which is a safety net for the process of dispensing medications. In this case, the safety net was circumvented because there was no prescription for the Phenergan given to respondent's son. Also, according to Dukatz, respondent's "changing stories" about who administered the Phenergan to her son calls into question her trustworthiness which is essential to ensuring public safety. Also, respondent's conviction demonstrates that she is not law abiding and has poor judgment.

Dukatz discussed the side effects of Phenergan which includes a boxed warning that cautions against use for children under the age of two years old because of cases of fatal respiratory depression. A boxed warning pops up when a pharmacist enters a prescription into the computer system. It is reasonable to expect a prudent pharmacist to ascertain that there is a black box warning and that giving Phenergan to a nine-month-old child is contraindicated. Respondent's training as a pharmacist would have taught her not to allow the administration of a drug without a prescription.

According to Dukatz, there is no evidence that respondent has ever been negligent as a pharmacist. Dukatz opined that if respondent either administered or allowed Phenergan to be administered to her son, then that constitutes as misuse of her education and unprofessional conduct. If she was not aware that the medication was administered to her son, then there is no violation of the Pharmacy law.

*Respondent's evidence*

13. In her personal statement, dated February 21, 2016, respondent described her professional background and her journey to becoming a pharmacist. She also wrote about her love of her son and being a working single mother. She wrote the following: "I absolutely and unequivocally did not abuse or neglect my son. I would never knowingly put my son in harm's way. It was the most devastating experience of my life to face criminal charges in court alleging that I had harmed him or allowed him to be harmed." Respondent wrote that she had wanted to go to a jury trial, but it was too costly and emotionally draining. Her attorney convinced her to plea to a misdemeanor. Respondent also wrote that: "the silver lining is that I have learned that I'm a stronger person than I thought and I will continue to strive to do my best to protect my son." However, respondent appears not to take responsibility for her actions as she wrote that she did "not allow this unfounded criminal case to impact her ability to earn a living as a pharmacist and provide for her family." Furthermore, respondent appears to minimize her conduct by characterizing her conviction as merely putting her son in an unsafe sleeping environment that caused his falls.

14. Respondent's testimony at hearing was not credible. In her version of the events on July 4, 2012, respondent stated that her father arrived at her house with a brown bag containing Pedialyte. Her parents relieved her for about 20 minutes and she went downstairs to eat. When she returned upstairs, she noticed that her son's clothes had been changed. Her parents left and told her to call if things got worse. Later, he started vomiting again, she called her parents who returned to her home and they all went to the hospital. According to respondent, on the way to the hospital, her father said that he was surprised that his grandson was not getting better because he had given him a half of a Phenergan suppository. Respondent stated that she was angry and could not believe it. She panicked, and "told the doctor at [the emergency room] that a half a dose or 12.5 mg of Phenergan was given to him that evening." She did not want to say that her father gave it to him because she felt responsible as his mother. Also, the doctor did not ask her specifically who gave her son the medication or ask for clarification on the dosage given. She reiterated that her father had not told her beforehand that he would administer Phenergan to her son. Respondent acknowledges that giving Phenergan to her son was wrong because there was no prescription and there was a black box warning.

Respondent testified that she "never told Det. McFadden that she lied to the doctor about the Phenergan." She also testified that both Det. McFadden and Dr. Albin were lying. There was no evidence presented to establish a motive for either Det. McFadden or Dr. Albin to be dishonest. In assessing Det. McFadden's credibility against respondent's credibility, the evidence is more convincing and persuasive that respondent told him that she lied to the

doctor. Here, Det. McFadden's memorialization of the events was taken down recently after it occurred. Also, her statement to Det. McFadden changed within one month. This makes her version of the events suspicious and not credible. Even if she had only told the doctor that Phenergan "had been administered," then this renders her integrity and honesty at issue as she knew that her father had administered it. This amounts to a lie by her intentionally misleading the doctor so as not to place the responsibility on her father.

Overall, respondent's testimony is not entirely credible. Her demeanor and defensive attitude under cross-examination was considered in determining her credibility. It is important to note that her testimony was inconsistent with her prior statements. Also, she has a self-interest in the outcome of this matter. Furthermore, respondent reliance on her parents' statements to corroborate her version of the events is not effective because, as outlined below, her parents' statements are not persuasive.

15. Hong Nguyen, respondent's father, wrote a declaration dated July 5, 2016, attesting to the events on July 4, 2012. According to Hong Nguyen, respondent had asked her parents to come to her home because her son had been vomiting all day. Hong Nguyen brought Pedialyte and Phenergan 25 mg suppositories and administered half a pill (12.5 mg) to curb the vomiting. He wrote: "I panicked and did not disclose to [respondent] at that time that I had administered the drug nor did I obtain her permission before doing so."

Hong Nguyen's explanation in his declaration is suspicious and dubious and is unreliable. It is believed that he brought the Phenergan with him to respondent's house after obtaining it from his own pharmacy as there is no evidence that respondent obtained the medication from her employer's pharmacy. It is reasonable to conclude that he intended to administer it if needed. Therefore, his characterizations, in 2012 and again in 2016, that he "panicked" and did not disclose to his daughter before administering it to his grandson is not credible. Panicking implies that he had no intent associated with his actions. This was not so. Moreover, he has a motive to protect his daughter which also tends to disprove the truthfulness of his declaration.

16. Kim Nguyen, respondent's mother, wrote a declaration, dated July 6, 2016, attesting to the events on July 4, 2012. Kim Nguyen states that she left the room after her grandson had vomited on her, and when she returned, her husband told her that he had given him medication. According to Kim Nguyen, it was only during the car ride to the hospital that her husband told them exactly what kind of medication he had given to their grandson and respondent was upset. Kim Nguyen's statement is also suspect as she has a motive to protect her daughter. Moreover, alluding that her husband only administered the drug while she and her daughter were both out of the room seems too opportune as an explanation.

17. It is reasonable to conclude that respondent was aware that her father had brought the medication with the intent to administer it to her son. Based on the totality of the circumstances, the evidence is convincing that respondent was aware that her father administered Phenergan to her son.

### *Mitigating Evidence*

18. Amber Do, a licensed pharmacist who works at Kaiser, testified on behalf of respondent. Do met respondent in college. Do states that respondent is trustworthy, easy to approach, caring, honest, and has integrity. Do has never questioned respondent's abilities as a pharmacist. Do states that she does not believe that respondent did what she has been accused of and her conviction has not changed Do's opinion of respondent. Do has observed respondent interact with her son and respondent is "careful not to injure him" and "always making sure he is safe."

19. Thuan-Vu Ho testified and submitted a character letter. Ho has been a licensed dentist since 2005. Dr. Ho has known respondent for three years and they lived together from November 2013 to December 2014. Dr. Ho describes respondent as a caring mother who fulfilled all the conditions to gain custody of her son. Also, while under her care, her son has become healthier. According to Dr. Ho, respondent is trustworthy, a respected professional, and being a pharmacist is her pride and joy. He trusts respondent to answer questions regarding prescribing medications for his patients.

20. Frederick Earl Hill, a former pharmacy technician at Kaiser, testified and provided a character letter. Hill had worked with respondent since 2000, when she mentored him and "took him under her wing" as he completed his externship. They are also friends outside of the work environment. Hill describes respondent as a kind person, who steps up to the plate," empathetic, respected by her peers, stable, reliable, calm under pressure, focused, and highly professional at work. He has no cause for concern for her work as a pharmacist.

21. As follows, respondent provided several letters of support; however, none are from a past or current Kaiser supervisor or manager:

a. Lawrence Nguyen, M.D., respondent's brother, states that they were raised in the same household with the same values. He has watched her care for others, and demonstrate concern, compassion, and empathy for people. According to him, respondent has integrity, is of substance and character, behaves ethically, and treats people well. Dr. Nguyen admits that he does not know the specifics of the offense as alleged by the board.

b. Edward Sporbert is a licensed physical therapist and Regional Director of Operations for ONR, Inc. Sporbert has been a family friend since 2002. He describes respondent as having character and integrity and being honest. He admits that he does not "know all the details of this situation."

c. Thomas Tan is a senior scientist for Hologic, Inc. He and respondent have been friends since 2012. Tan describes respondent as open, warm, and a loving mother who holds her son's best interest at heart. According to Tan, people open up to respondent because she fosters a safe and nonjudgmental environment.



22. Respondent is approximately 40 years old. She has shared custody of her son with his father. According to respondent, the doctors currently have no concerns about her son's health.

23. Respondent received her doctorate in pharmacy from the University of the Pacific-Stockton, School of Pharmacy. She is employed as a pharmacist at Kaiser in Santa Clara, where she has worked since 1997, when she started as a student intern. Her duties as a hospital pharmacist are to dispense medications prescribed by a doctor, supervise the technicians, and perform other administrative responsibilities. After her son was born, she obtained a job as a transitional care pharmacist at Kaiser which allowed her to work 32 hours a week and spend more time with her newborn. She always wanted to be and loves being a pharmacist which is her "dream job."

24. Respondent completed a one-year certified child abuse treatment program from February 2013 through March 2014.

25. Respondent has no record of prior disciplinary action before the board. Respondent states that the criminal case has never adversely affected her career or her performance as a pharmacist. She received no discipline and is in good standing at Kaiser. She has been nominated by her peers for going "above and beyond."

#### *Costs*

26. The board certifies that costs in the amount of \$11,362.50, were incurred in connection with the prosecution of this Amended Accusation by the Attorney General's office.

27. Respondent objected to the costs. Complainant's case appears to be primarily a documentary case and the board did not appear to initiate its own investigation. Also, the scope of the investigation and costs do not appear appropriate to the alleged conduct of respondent. A reduction of the reasonable costs of investigation and enforcement is warranted and should be reduced to \$8,000.

### LEGAL CONCLUSIONS

1. The standard of proof applied in this proceeding is clear and convincing evidence to a reasonable certainty.

2. Business and Professions Code section 4301<sup>1</sup> provides that a license to practice pharmacy may be disciplined if the licensee has engaged in unprofessional conduct.

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<sup>1</sup>All statutory references are to the Business and Professions Code, unless otherwise noted.

3. Unprofessional conduct includes the conviction of a crime that is substantially related to the qualifications, functions, and duties of a licensed pharmacist. (§ 4301, subd. (l).) The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline, or to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a pharmacist under the Pharmacy Law.

4. Unprofessional conduct also includes the following:

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

(§ 4301, subd. (o).)

5. Unprofessional conduct is also defined under section 4306.5, as follows:

Acts or omissions that involve, in whole or in part, the failure to exercise or implement his or her best professional judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or with regard to the provision of services.

(§ 4306.5, subd. (b).)

*First Cause for Discipline - Conviction*

6. Sections 490 and 4301, subdivision (l), provide that the board may discipline a licensee for unprofessional conduct for conviction of a crime substantially related to the qualifications, functions and duties of a pharmacist. A crime is considered to be substantially related to the qualifications, functions or duties of a pharmacist if to “a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by [the] license or registration in a manner consistent with the public health, safety, or welfare.” (Cal. Code Regs., tit. 16, § 1770.)

Respondent contends that her conviction is not substantially related to the qualifications, functions, or duties of a licensed pharmacist. Respondent states that the factual basis for the conviction was explicitly stated during her sentencing as merely placing her child “in a situation where his person and health were endangered by placing him in an unsafe sleeping environment.” Respondent contends that the manner in which she placed her son in a sleeping position has no bearing on the qualifications or duties of a pharmacist. She also argues that exhibiting poor judgment is not sufficient to establish that the conviction is

substantially related to the qualifications or duties of a pharmacist, despite Dukatz' testimony to the contrary. Respondent emphasizes that her conduct did not involve any violence, assault, aggression, fraud, deceit or dishonesty of any kind. Moreover, she asserts that her conviction is not for a crime involving moral turpitude, and notes that her conviction did not involve the administration of the Phenergan.

Respondent's arguments are not persuasive. First, respondent was convicted of willful abuse/endangerment of a child. This is a crime which evidences a potential unfitness to perform the functions of a pharmacist in a manner consistent with the public safety and, as such, is substantially related to the qualifications, functions, or duties of a licensed pharmacist. The circumstances surrounding the crime were more than just putting her child in an unsafe sleeping environment. Her crime involved "circumstances and conditions likely to produce great harm and death." Respondent's actions were the opposite of what society expects from a parent when placing a child in a sleeping environment that could have likely caused great harm or death, or in this case, could have caused his brain hemorrhage. Respondent's willful disregard for her own child's well-being and placing her child at risk is the type of conduct that demonstrates the potential for future harm to the public and supplies the nexus and "logical connection" between the crime and her fitness or competence to practice as a licensed pharmacist. (*Sulla v. Bd. of Registered Nursing* (205 Cal.App.4th 1195.) Finally, her conviction reflects a lack of sound professional and personal judgment relevant to a pharmacist's fitness and competence to practice. Her conviction shows an inability or unwillingness to obey the law against endangering a vulnerable child and "constitutes a serious breach of duty owed to society," and "demonstrates a professional unfitness meriting license discipline." (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.)

7. Cause exists to take disciplinary action against respondent's pharmacist license pursuant to sections 490 and 4301, subdivision (l), individually and collectively, by reason of the matters set forth in Findings 3 through 12 and Legal Conclusions 2, 3, and 6.

8. Cause exists to take disciplinary action against respondent's pharmacist license pursuant to sections 490 and 4301, subdivision (l), as that section interrelates with 4301, subdivision (o), by reason of the matters set forth in Findings 3 through 12 and Legal Conclusions 2, 3, 4, and 6.

#### *Second Cause for Discipline - Unprofessional Conduct*

9. The evidence established that respondent allowed her father to administer non-prescribed Phenergan to her son which constitutes unprofessional conduct.

10. Cause exists to take disciplinary action against respondent's pharmacist license pursuant to section 4301, by reason of the matters set forth in Findings 5 through 12, and 17, and Legal Conclusions 2 and 9.

11. Cause exists to take disciplinary action against respondent's pharmacist license pursuant to section 4301, in conjunction with section 4306.5, by reason of the matters set forth in Findings 5 through 12 and 17, and Legal Conclusions 2, 5, and 9.

12. Cause exists to take disciplinary action against respondent's pharmacist license pursuant to section 4301, subdivision (o), in conjunction with section 4306.5, by reason of the matters set forth in Findings 5 through 12 and 17, and Legal Conclusions 2, 4, 5 and 9.

*Third Cause for Discipline - Misuse of Education*

13. The evidence established that respondent, by allowing her father to administer non-prescribed Phenergan to her son, misused her education as a licensed pharmacist.

14. Cause exists to take disciplinary action against respondent's pharmacist license pursuant to section 4301, by reason of the matters set forth in Findings 5 through 12 and 17, and Legal Conclusions 2 and 13.

15. Cause exists to take disciplinary action against respondent's pharmacist license pursuant to section 4301, in conjunction with section 4306.5, by reason of the matters set forth in Findings 5 through 12 and 17, and Legal Conclusions 2, 5, and 13.

16. Cause exists to take disciplinary action against respondent's pharmacist license pursuant to section 4301, subdivision (o), in conjunction with section 4306.5, by reason of the matters set forth in Findings 5 through 12 and 17, and Legal Conclusions 2, 4, 5 and 13.

*Fourth Cause for Discipline - Dishonesty*

17. Section 4301, subdivision (f), states that, unprofessional conduct includes, "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."

18. The evidence established that respondent engaged in act involving dishonesty when she initially told the doctor that she (and not her father) had administered the Phenergan to her son. She was also dishonest in her statements to Det. McFadden.

19. Cause exists to take disciplinary action against respondent's pharmacist license pursuant to section 4301, subdivision (f), by reason of the matters set forth in Findings 5 through 12 and 17, and Legal Conclusions 2, 17, and 18.

### *Disciplinary considerations*

20. The board has established disciplinary guidelines for evaluating the appropriate disciplinary penalty to impose on a licensee who is subject to discipline. The factors to be considered include actual or potential harm to pharmacy consumers or the public; prior disciplinary record; number of current violations; nature and severity of the acts under consideration; time that has passed since the acts; compliance with terms of any criminal sentence, parole, or probation; overall criminal record; expungement; whether the conduct was intentional or negligent or demonstrated incompetence; any financial benefit to the respondent from the misconduct; mitigating and aggravating evidence; and evidence of rehabilitation. All factors have been considered.

21. A violation of section 4301, for unprofessional conduct, falls within a Category II violation in determining the appropriate disciplinary penalty. Category II encompasses violations which reflect on ethics or a criminal conviction not involving dangerous drugs or controlled substances. The maximum penalty for a Category II violation is outright revocation. The minimum penalty is a stayed revocation with three years' probation with all the standard terms and conditions of probation and optional terms and conditions as appropriate. Respondent's conviction and unprofessional conduct fall within Category II.

22. Respondent's conviction and unprofessional conduct are serious and raise concerns about her professional fitness for continued licensure as a pharmacist. Her dishonesty is also of concern. Honesty is not "considered an isolated or transient behavior; it is more of a continuing trait of character." (*Gee v. State Personnel Bd.* (1970) 5 Cal.App.3d 713, 719.) "Honesty and integrity are deeply and daily involved in various aspects of the practice [of a pharmacist]." (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.)

However, respondent is in compliance with the conditions of her criminal probation. Although, good behavior is expected of one while on probation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1096.) Also, in mitigation, she regained custody of her son who is said to be in good health, and there is no evidence of any further incidents of child endangerment. Respondent has maintained steady employment. She has character witnesses who attest to her record as a pharmacist. This is the first disciplinary action against respondent's license. Despite her dishonesty and her failure to accept responsibility for her actions, it is determined that respondent has presented sufficient evidence of rehabilitation to warrant retaining her license, on a probationary basis. All things considered, it is concluded that protection of the public does not compel revocation of respondent's license to practice as a pharmacist. The public will be adequately protected by placing respondent's license on probation for four years (approximately two years longer than her criminal probation) with optional terms and conditions, including but not limited to, that she file criminal probation reports, undergo a mental health examination, and take an ethics course.

23. All other contentions made by respondent and complainant not specifically addressed herein were considered and are found to be without merit.

*Costs*

24. Business and Professions Code section 125.3, provides that respondent may be ordered to pay the board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The board's certification of the actual costs constitutes prima facie evidence of the reasonable costs.

The case of *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, sets forth the factors to be considered in determining the reasonableness of costs. Those factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. The *Zuckerman* factors have been considered.

Complainant's case appears to be primarily a documentary case and the board did not appear to initiate its own investigation. Also, the scope of the investigation and costs do not appear appropriate to the alleged conduct of respondent. Respondent was successful in providing sufficient evidence at hearing to retain her pharmacist license with probationary conditions. These all warrant a reduction of the costs. The board's reasonable costs of investigation and enforcement are determined to be \$8,000, as set forth in Findings 26 and 27.

ORDER

Pharmacist License number RPH 51807 issued to respondent Trilby Trang Nguyen is revoked; however, the revocation is stayed and respondent is placed on probation for four years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws

a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment

a conviction of any crime

discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report such occurrence shall be considered a violation of probation.

2. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff

Respondent shall cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of her probation. Failure to cooperate shall be considered a violation of probation.

5. Continuing Education

Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the board or its designee.

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number OAH No. 2016010487 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number OAH No. 2016010487, and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the decision in case number OAH No. 2016010487 in advance of respondent commencing work at each licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he or she has read the decision in case number OAH No. 2016010487 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgments to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist or any position for which a pharmacist license is a requirement or criterion for employment, whether respondent is an employee, independent contractor or volunteer.



7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving as a Consultant

During the period of probation, respondent shall not supervise any intern pharmacist, be the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board nor serve as a consultant unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

8. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$8,000. Respondent shall make scheduled payments as determined by the board.

There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to reimburse the board its costs of investigation and prosecution.

9. Probation Monitoring Costs

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

10. Status of License

Respondent shall, at all times while on probation, maintain an active, current license with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

11. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender her license to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish her pocket and wall license to the board within ten (10) days of notification by the board that the surrender is accepted. Respondent may not reapply for any license from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board, including any outstanding costs.

12. Notification of a Change in Name, Residence Address, Mailing Address or Employment

Respondent shall notify the board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the board in writing within ten (10) days of a change in name, residence address, mailing address, or phone number.

Failure to timely notify the board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

13. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 30 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for a minimum of 30 hours per calendar month in California, respondent must notify the board in writing within ten (10) days of the cessation of practice, and must further notify the board in writing within ten (10) days of the resumption of practice. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

“Cessation of practice” means any calendar month during which respondent is not practicing as a pharmacist for at least 30 hours, as defined by Business and Professions Code section 4000 et seq.  
“Resumption of practice” means any calendar month during which respondent is practicing as a pharmacist for at least 30 hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

14. Violation of Probation

If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

15. Completion of Probation

Upon written notice by the board or its designee indicating successful completion of probation, respondent's license will be fully restored.

16. Mental Health Examination

Within thirty (30) days of the effective date of this decision, and on a periodic basis as may be required by the board or its designee, respondent shall undergo, at her own expense, psychiatric evaluation(s) by a board-appointed or board-approved licensed mental health practitioner. The approved evaluator shall be provided with a copy of the board's Accusation and decision. Respondent shall sign a release authorizing the evaluator to furnish the board with a current diagnosis and a written report regarding respondent's judgment and ability to function independently as a pharmacist with safety to the public. Respondent shall comply with all the recommendations of the evaluator if directed by the board or its designee.

If the evaluator recommends, and the board or its designee directs, respondent shall undergo psychotherapy. Within thirty (30) days of notification by the board that a recommendation for psychotherapy has been accepted, respondent shall submit to the board or its designee, for prior approval, the name and qualification of a licensed mental health practitioner of respondent's choice. Within thirty (30) days of approval thereof by the board, respondent shall submit documentation to the board demonstrating the commencement of psychotherapy with the approved licensed mental health practitioner. Should respondent, for any reason, cease treatment with the approved licensed mental health practitioner, respondent shall notify the board immediately and, within thirty (30) days of ceasing treatment therewith, submit the name of a replacement licensed mental health practitioner of respondent's choice to the board for its prior approval. Within thirty (30) days of approval thereof, respondent shall submit documentation to the board demonstrating the commencement of psychotherapy with the approved replacement. Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

Upon approval of the initial or any subsequent licensed mental health practitioner, respondent shall undergo and continue treatment with that therapist, at respondent's own expense, until the therapist recommends in writing to the board, and the board or its designee agrees by way of a written notification to respondent, that no further psychotherapy is necessary. Upon receipt of such recommendation from the treating therapist, and before determining whether to accept or reject said recommendation, the board or its designee may require respondent to undergo, at respondent's expense, a mental health evaluation by a separate board-appointed or board-approved evaluator. If the approved evaluator recommends that respondent continue psychotherapy, the board or its designee may require respondent to continue psychotherapy.

Psychotherapy shall be at least once a week unless otherwise approved by the board. Respondent shall provide the therapist with a copy of the board's Accusation and decision no later than the first therapy session. Respondent shall take all necessary steps to ensure that the treating therapist submits written

quarterly reports to the board concerning respondent's fitness to practice, progress in treatment, and other such information as may be required by the board or its designee.

If at any time the approved evaluator or therapist determines that respondent is unable to practice safely or independently as a pharmacist, the licensed mental health practitioner shall notify the board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the board that practice may be resumed.

17. Community Services Program

Within sixty (60) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, a community service program in which respondent shall provide free health-care related services on a regular basis to a community or charitable facility or agency for at least 25 hours per year for the first two years of probation. Within thirty (30) days of board approval thereof, respondent shall submit documentation to the board demonstrating commencement of the community service program. A record of this notification must be provided to the board upon request. Respondent shall report on progress with the community service program in the quarterly reports. Failure to timely submit, commence, or comply with the program shall be considered a violation of probation.

18. Remedial Education

Within ninety (90) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, an appropriate program of remedial education related to unprofessional conduct. The program of remedial education shall consist of at least 10 hours, which shall be completed within 18 months at respondent's own expense. All remedial education shall be in addition to, and shall not be credited toward, continuing education (CE) courses used for license renewal purposes.

Failure to timely submit or complete the approved remedial education shall be considered a violation of probation. The period of probation will be automatically extended until such remedial education is successfully completed and written proof, in a form acceptable to the board, is provided to the board or its designee.

Following the completion of each course, the board or its designee may require respondent, at his own expense, to take an approved examination to test respondent's knowledge of the course. If respondent does not achieve a passing score on the examination, this failure shall be considered a violation of probation. Any such examination failure shall require respondent to take another course approved by the board in the same subject area.

19. Supervised Practice

During the period of probation, respondent shall practice only under the supervision of a licensed pharmacist not on probation with the board. Upon and after the effective date of this decision, respondent shall not practice pharmacy and her license shall be automatically suspended until a supervisor is approved by the board or its designee. The supervision shall be, as required by the board or its designee, either:

- a) Continuous – At least 75% of a work week
- b) Substantial - At least 50% of a work week
- c) Partial - At least 25% of a work week
- d) Daily Review – Supervisor's review of probationer's daily activities within 24 hours

Within thirty (30) days of the effective date of this decision, respondent shall have her supervisor submit notification to the board in writing stating that the supervisor has read the decision in case number OAH No. 2016010487 and is familiar with the required level of supervision as determined by the board or its designee. It shall be respondent's responsibility to ensure that her employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely acknowledgements to the board shall be considered a violation of probation.

If respondent changes employment, it shall be respondent's responsibility to ensure that her employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the board. Respondent shall have her new supervisor, within fifteen (15) days after employment commences, submit notification to the board in writing stating the direct supervisor and pharmacist-in-charge have read the decision in case number OAH No. 2016010487 and is familiar with the level of supervision as determined by the board. Respondent shall not practice pharmacy and her license shall be automatically suspended until the board or its designee approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely acknowledgements to the board shall be considered a violation of probation.

Within ten (10) days of leaving employment, respondent shall notify the board in writing.

20. No Supervision of Ancillary Personnel

During the period of probation, respondent shall not supervise any ancillary personnel, including, but not limited to, pharmacy technicians or designated representatives in any entity licensed by the board.

Failure to comply with this provision shall be considered a violation of probation.

21. No Ownership of Licensed Premises

Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

22. Criminal Probation/Parole Reports

Respondent shall provide a copy of the conditions of any criminal probation/parole to the board, in writing, within ten (10) days of the issuance or modification of those conditions. Respondent shall provide the name of her probation/parole officer to the board, in writing, within ten (10) days after that officer is designated or a replacement for that officer is designated. Respondent shall provide a copy of all criminal probation/parole reports to the board within ten (10) days after respondent receives a copy of such a report. Failure to timely make any of the submissions required hereby shall be considered a violation of probation.

23. Ethics Course

Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the board or its designee. Failure to initiate the course during the first year of probation, and complete it within the second year of probation, is a violation of probation.

Respondent shall submit a certificate of completion to the board or its designee within five days after completing the course.

DATED: October 27, 2016

DocuSigned by:

*Regina Brown*

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REGINA BROWN  
Administrative Law Judge  
Office of Administrative Hearings



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*Attorneys for Complainant*

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

10 In the Matter of the Accusation Against:

Case No. 5497

11 **TRILBY TRANG NGUYEN**  
12 666 Kirk Glen Drive  
13 San Jose, CA 95133

**AMENDED ACCUSATION**

14 **Pharmacist License No. RPH 51807**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

- 18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
19 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.  
20 2. On or about August 29, 2000, the Board issued Original Pharmacist License Number  
21 RPH 51807 to Trilby Trang Nguyen (Respondent). The Pharmacist License was in full force and  
22 effect at all times relevant to the charges brought herein and will expire on October 31, 2015,  
23 unless renewed.

24 **JURISDICTION**

- 25 3. This Accusation is brought before the Board under the authority of the following  
26 laws. All section references are to the Business and Professions Code (Code) unless otherwise  
27 indicated.

28 ///

1 4. Code section 4011 provides that the Board shall administer and enforce both the  
2 Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act  
3 [Health & Safety Code, § 11000 et seq.].

4 5. Code section 4300 provides that every license issued by the Board may be suspended  
5 or revoked.

6 6. Code section 4300.1 provides that the expiration, cancellation, forfeiture, or  
7 suspension of a board-issued license by operation of law or by order or decision of the board or a  
8 court of law, the placement of a license on a retired status, or the voluntary surrender of a license  
9 by a licensee shall not deprive the board of jurisdiction to commence or proceed with any  
10 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision  
11 suspending or revoking the license.

12 **STATUTORY AND REGULATORY PROVISIONS**

13 7. Code section 490 states, in pertinent part that, in addition to any other action that a  
14 board is permitted to take against a licensee, a board may suspend or revoke a license on the  
15 ground that the licensee has been convicted of a crime, if the crime is substantially related to the  
16 qualifications, functions, or duties of the business or profession for which the license was issued.

17 8. Code section 4301 provides, in pertinent part:

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

21  
22 (1) The conviction of a crime substantially related to the qualifications, functions, and duties  
23 of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
24 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
25 substances or of a violation of the statutes of this state regulating controlled substances or  
26 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
27 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
28 The board may inquire into the circumstances surrounding the commission of the crime, in order

1 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
2 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
3 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
4 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
5 of this provision. The board may take action when the time for appeal has elapsed, or the  
6 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
7 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
8 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
9 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
10 indictment.

11 ...  
12 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
13 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
14 federal and state laws and regulations governing pharmacy, including regulations established by  
15 the board or by any other state or federal regulatory agency.

16 ...  
17 9. Code section 4306.5 provides, in pertinent part:

18 Unprofessional conduct for a pharmacist may include any of the following:

19 (a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or  
20 her education, training, or experience as a pharmacist, whether or not the act or omission arises in  
21 the course of the practice of pharmacy or the ownership, management, administration, or  
22 operation of a pharmacy or other entity licensed by the board.

23 (b) Acts or omissions that involve, in whole or in part, the failure to exercise or implement  
24 his or her best professional judgment or corresponding responsibility with regard to the  
25 dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or with  
26 regard to the provision of services.

27 ...

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

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

8 CONTROLLED SUBSTANCES/DANGEROUS DRUGS

9 11. Code Section 4022 states:

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

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

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

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 12. Phenergan is a brand name for the antihistamine promethazine, a dangerous drug as  
20 designated by Business and Professions Code section 4022. It is a sedative and sleep aid, and it is  
21 also used to treat allergy symptoms, nausea, and vomiting, and prevent motion sickness. The  
22 FDA has issued a black-box warning about the use of promethazine in children younger than two  
23 years because the drug could lead to severe or fatal breathing problems.

24 COST RECOVERY

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

FACTS

1  
2 14. On or about July 7, 2012, Respondent took her then nine-month old son L.L.<sup>1</sup> to the  
3 hospital for evaluation. L.L. was lethargic and had been vomiting for the preceding days.  
4 Treating doctors discovered L.L. had unknown brain hemorrhaging. Given the nature of L.L.'s  
5 injury, the Santa Clara County Department of Family and Children's Services and the San Jose  
6 Police Department conducted an investigation.

7 15. During the course of the investigation, Respondent admitted the following:

8 (a) In or about May 2012, while in the care of his grandmother, L.L. fell off a bed and  
9 was not taken to the hospital for evaluation;  
10 (b) In or about the first week of June 2012, L.L. fell off his bed;  
11 (c) In or about June 2012, L.L. fell off Respondent's bed located in the master bedroom.  
12 Respondent installed a guard rail around her bed;

13 (d) On or about June 28, 2012, Respondent found L.L.'s head caught in the guard rail  
14 surrounding the bed in the master bedroom;

15 (d) On or about June 30, 2012, Respondent found L.L. lodged between the bed and  
16 nightstand in the master bedroom.

17 (e) On July 7, 2102, Respondent told the attending doctor that she had administered  
18 Phenergan to L.L.

19 16. On or about July 19, 2012, Respondent told the investigating officer that her father  
20 was the one who administered the Phenergan to L.L., not herself.

21 17. On or about January 13, 2015, in Santa Clara Superior Court case number C1245536,  
22 Respondent was convicted of having violated California Penal Code section 273a(a) (willful  
23 abuse/endangerment of a child). Respondent was placed on a four-year grant of probation.

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27 \_\_\_\_\_  
28 <sup>1</sup> Initials used to maintain confidentiality.

1 FIRST CAUSE FOR DISCIPLINE

2 (Criminal Conviction)

3 18. Respondent is subject to disciplinary action under Code sections 490 and 4301 (l)  
4 and/or (o), in that she has been convicted of a crime substantially related to the qualifications,  
5 functions, and duties of a pharmacist, as described in paragraph 17, above.

6 SECOND CAUSE FOR DISCIPLINE

7 (Unprofessional Conduct)

8 19. Respondent is subject to disciplinary action under Code sections 4301 and/or 4301 in  
9 conjunction 4306.5 and/or section 4301(o), in that she administered and/or allowed Phenergan to  
10 be administered to her infant son, without having a valid prescription, as described in paragraphs  
11 14 through 16, above.

12 THIRD CAUSE FOR DISCIPLINE

13 (Misuse of Education)

14 20. Respondent is subject to disciplinary action under Code sections 4301 and/or 4301 in  
15 conjunction with 4306.5 and/or section 4301(o), in that she administered and/or allowed  
16 Phenergan to be administered to her infant son, without having a valid prescription, as described  
17 in paragraphs 14 through 16, above.

18 PRAYER

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

21 1. Revoking or suspending Pharmacist License Number RPH 51807, issued to Trilby  
22 Trang Nguyen;

23 ///

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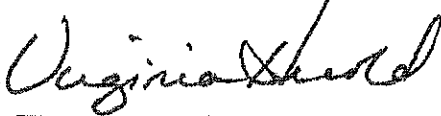
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1           2.    Ordering Trilby Trang Nguyen to pay the Board of Pharmacy the reasonable costs of  
2 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
3 125.3;

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

5  
6 DATED: 5/25/16



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

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*Attorneys for Complainant*

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

10 In the Matter of the Accusation Against:  
11 **TRILBY TRANG NGUYEN**  
12 **666 Kirk Glen Drive**  
13 **San Jose, CA 95133**  
  
14 **Pharmacist License No. RPH 51807**  
15 Respondent.

Case No. 5497  
  
**A C C U S A T I O N**

16 Complainant alleges:

17 **PARTIES**

- 18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
19 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs,  
20 2. On or about August 29, 2000, the Board issued Original Pharmacist License Number  
21 RPH 51807 to Trilby Trang Nguyen (Respondent). The Pharmacist License was in full force and  
22 effect at all times relevant to the charges brought herein and will expire on October 31, 2015,  
23 unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board under the authority of the following  
26 laws. All section references are to the Business and Professions Code (Code) unless otherwise  
27 indicated.

28 ///



1           4.     Code section 4011 provides that the Board shall administer and enforce both the  
2 Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act  
3 [Health & Safety Code, § 11000 et seq.].

4           5.     Code section 4300 provides that every license issued by the Board may be suspended  
5 or revoked.

6           6.     Code section 4300.1 provides that the expiration, cancellation, forfeiture, or  
7 suspension of a board-issued license by operation of law or by order or decision of the board or a  
8 court of law, the placement of a license on a retired status, or the voluntary surrender of a license  
9 by a licensee shall not deprive the board of jurisdiction to commence or proceed with any  
10 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision  
11 suspending or revoking the license.

12                                   **STATUTORY AND REGULATORY PROVISIONS**

13           7.     Code section 490 states, in pertinent part that, in addition to any other action that a  
14 board is permitted to take against a licensee, a board may suspend or revoke a license on the  
15 ground that the licensee has been convicted of a crime, if the crime is substantially related to the  
16 qualifications, functions, or duties of the business or profession for which the license was issued.

17           8.     Code section 4301 provides, in pertinent part:

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

21                                   ...

22           (1) The conviction of a crime substantially related to the qualifications, functions, and duties  
23 of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
24 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
25 substances or of a violation of the statutes of this state regulating controlled substances or  
26 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
27 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
28 The board may inquire into the circumstances surrounding the commission of the crime, in order

1 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
2 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
3 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
4 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
5 of this provision. The board may take action when the time for appeal has elapsed, or the  
6 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
7 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
8 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
9 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
10 indictment.

11 ...

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

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

19 COST RECOVERY

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

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1 CAUSE FOR DISCIPLINE

2 (Criminal Conviction)

3 11. Respondent is subject to disciplinary action under Code sections 490 and 4301(l) in  
4 that she has been convicted of a crime substantially related to the qualifications, functions, and  
5 duties of a pharmacist. The circumstances are as follows:

6 12. On or about January 13, 2015, in Santa Clara Superior Court case number C1245536,  
7 Respondent was convicted of having violated California Penal Code section 273a(a) (willful  
8 abuse/endangerment of a child). Respondent was placed on a four-year grant of probation.

9 PRAYER

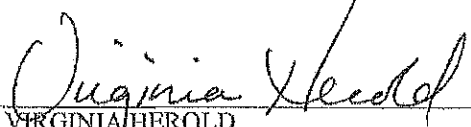
10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
11 and that following the hearing, the Board of Pharmacy issue a decision:

12 1. Revoking or suspending Pharmacist License Number RPH 51807, issued to Trilby  
13 Trang Nguyen;

14 2. Ordering Trilby Trang Nguyen to pay the Board of Pharmacy the reasonable costs of  
15 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
16 125.3;

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

18  
19 DATED: 9/20/15

  
20 VIRGINIA HEROLD  
21 Executive Officer  
22 Board of Pharmacy  
23 Department of Consumer Affairs  
24 State of California  
25 Complainant

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7 *Attorneys for Complainant*

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. 5589

12 **JOVEN PONCE ALVAREZ**  
2049 Villagetree Drive  
13 San Jose, CA 95791

**ACCUSATION**

14 **Pharmacy Technician Registration No. TCH**  
121288  
15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official  
20 capacity as the Executive Officer of the California State Board of Pharmacy.  
21 2. On or about February 21, 2012, the Board issued Pharmacy Technician Registration  
22 Number TCH 121288 to Joven Ponce Alvarez (Respondent). The Pharmacy Technician  
23 Registration was in full force and effect at all times relevant to the charges brought herein and  
24 will expire on March 31, 2017, unless renewed.

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28 //

1 JURISDICTION

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

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

6 5. Section 4300.1 of the Code states:

7 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by  
8 operation of law or by order or decision of the board or a court of law, the placement of a license  
9 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board  
10 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary  
11 proceeding against, the licensee or to render a decision suspending or revoking the license."

12 6. Section 4301 of the Code states:

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

16 . . .

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

22 . . .

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

25 . . .

26 (l) The conviction of a crime substantially related to the qualifications, functions, and duties  
27 of a licensee under this chapter.

28 . . .

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

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

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

12 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
13 administrative law judge to direct a licentiate found to have committed a violation or violations of  
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
15 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
16 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
17 included in a stipulated settlement.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct – Conviction of Substantially Related Crime)

3 10. Respondent is subject to disciplinary action under section 4301(l) and section 490 of  
4 the Code, by reference to California Code or Regulations, title 16, section 1770, for the  
5 conviction of a substantially related crime, in that on or about June 2, 2015, in the Alameda  
6 County Superior Court criminal case entitled *People v. Joven Ponce Alvarez*, Case No. 150919-3,  
7 Respondent was convicted by plea of no contest of violating Vehicle Code section 23152(b),  
8 (driving with a blood alcohol level in excess of .08%), a misdemeanor. The circumstances are as  
9 follows:

10 a. On or about February 16, 2015, at approximately 2:12 a.m. California Highway Patrol  
11 Officers observed Respondent's vehicle weaving in traffic. An enforcement stop was initiated and  
12 the vehicle was pulled over. Upon contact with Respondent, the officers observed signs of  
13 intoxication including red/watery eyes, slurred speech and the odor of an alcoholic beverage  
14 emanating from the vehicle. Respondent also stated that he had consumed alcohol prior to  
15 driving. Respondent was unable to perform Field Sobriety Tests explained and demonstrated by  
16 the officers. Respondent agreed to a preliminary alcohol screening (PAS) which showed a breath  
17 alcohol content of 0.123% at 2:26 a.m. and 0.129% at 2:28 a.m.

18 b. A subsequent chemical breath test showed a blood alcohol content of .13% at 3:13  
19 a.m. and again at 3:16 a.m.

20 c. Respondent was sentenced as follows: Three (3) years probation, one (1) day in jail,  
21 two (2) days of service in the Alameda County Sheriff's Weekend Alternative Program, enroll  
22 and complete a three (3) month First Offender DUI program, attend two (2) Narcotics  
23 Anonymous meetings per week for three (3) months and required to pay a fine of \$390.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Self-Administration of Controlled Substance and/or Alcohol)

3 11. Respondent is subject to discipline under section 4301, subdivision (h) and/or 4301  
4 subdivision (j) of the Code, in that Respondent, as described in paragraph 10 above, administered  
5 alcohol to an extent or in a manner as to be dangerous to himself and/or the public.

6  
7 THIRD CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct)

9 12. Respondent is subject to discipline under section 4301 of the Code, in that  
10 Respondent, as described in paragraph 10 above, engaged in unprofessional conduct.

11  
12 PRAYER

13 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,  
14 and that following the hearing, the Board issue a decision:

- 15 1. Revoking or suspending Pharmacy Technician Registration Number TCH 121288,  
16 issued to Joven Ponce Alvarez;
- 17 2. Ordering Joven Ponce Alvarez to pay the Board the reasonable costs of the  
18 investigation and enforcement of this case, pursuant to Business and Professions Code section  
19 125.3;
- 20 3. Taking such other and further action as deemed necessary and proper.

21  
22  
23 DATED: 2/5/16

24 Virginia Herold

25 VIRGINIA K. HEROLD  
26 Executive Officer  
27 California State Board of Pharmacy  
27 State of California  
28 *Complainant*