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

In the Matter of the Accusation Against:

**SUNSET PHARMACY
TOM THANH NGUYEN,
OWNER/PHARMACIST-IN-CHARGE**
3101 Sunset Boulevard, Suite 4C
Rocklin, CA 95677

Pharmacy Permit No. PHY 51210

and

TOM THANH NGUYEN
8760 Center Pakway #241
Elk Grove, CA 95758

Pharmacist Permit No. RPH 66162,

Respondents.

Case No. 6159

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 7, 2017, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed Accusation No. 6159 before the Board against Sunset Pharmacy and Tom Thanh Nguyen (“Respondent”) as the Individual Licensed Owner and Pharmacist-In-Charge (“PIC”), and Tom Thanh Nguyen, Pharmacist. (Accusation attached as Exhibit A.)

2. On or about April 24, 2013, the Board issued Pharmacy Permit Number PHY 51210

1 to Tom Thanh Nguyen as the Individual Licensed Owner and Pharmacist-In-Charge (“PIC”)
2 doing business as Sunset Pharmacy. The Pharmacy Permit (“pharmacy permit”) was in full force
3 and effect at all times relevant to the charges brought herein, expired on April 1, 2015, and was
4 cancelled on October 11, 2016.

5 3. On or about October 5, 2011, the Board issued Pharmacist License Number RPH
6 66162 to Tom Thanh Nguyen. The Pharmacist License (“pharmacist license”) was in full force
7 and effect at all times relevant to the charges brought herein and will expire on November 30,
8 2018, unless renewed.

9 4. On or about February 21, 2018, Respondent was served by Certified and First Class
10 Mail copies of the Accusation No. 6159, Statement to Respondent, Notice of Defense, Request
11 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
12 11507.7) at Respondent's residence address which was maintained with the Board which was and
13 is: 6284 Lone Tree Blvd. Rocklin CA 95765.

14 5. On or about May 3, 2018, Respondent was served by Certified and First Class Mail
15 copies of the Accusation No. 6159, Statement to Respondent, Notice of Defense, Request for
16 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
17 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
18 is required to be reported and maintained with the Board. Respondent's address of record was
19 and is: 8760 Center Parkway, Elk Grove, CA 95758.¹

20 6. Government Code section 11506(c) states, in pertinent part:

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

26 7. The Board takes official notice of its records and the fact that Respondent failed to
27 file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore
28 waived his right to a hearing on the merits of Accusation No. 6159.

¹ Previously, on or about December 21, 2017, Respondent was served by Certified and First Class Mail
copies of the same documents at Respondent's previous address of record which was: P.O. Box 580418 Elk Grove,
CA 95758.

1 8. California Government Code section 11520(a) states, in pertinent part:

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

5 9. Pursuant to its authority under Government Code section 11520, the Board finds
6 Respondent is in default. The Board will take action without further hearing and, based on the
7 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
8 taking official notice of all the investigatory reports, exhibits and statements contained therein on
9 file at the Board's offices regarding the allegations contained in Accusation No. 6159, finds that
10 the charges and allegations in Accusation No. 6159, are separately and severally, found to be true
11 and correct by clear and convincing evidence.

12 10. The Board finds that the actual costs for Investigation and Enforcement are \$7,632.75
13 as of February 9, 2018.

14 DETERMINATION OF ISSUES

15 1. Based on the foregoing findings of fact, Respondent Sunset Pharmacy, Tom Thanh
16 Nguyen, Owner/Pharmacist-in-Charge has subjected Pharmacy Permit No. PHY51210 to
17 discipline.

18 2. Based on the foregoing findings of fact, Respondent Tom Thanh Nguyen has
19 subjected his Pharmacist Permit No. RPH66162 to discipline

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

21 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist License
22 based upon the following violations alleged in the Accusation which are supported by the
23 evidence contained in the Default Decision Evidence Packet in this case:

24 a. A violation of Code section 4301, subdivision (j) and (o), on the grounds
25 of unprofessional conduct, in that Respondent violated Health and Safety Code
26 section 11165, subdivision (d) as follows: Respondent failed to report to CURES any
27 Schedule II, III, and IV controlled substances dispensed during the time Sunset
28 Pharmacy was open for business;

1 b. A violation of Code sections 4301, subdivisions (j) and (o), on the
2 grounds of unprofessional conduct, in that Respondent violated CCR, title 16, section
3 1708.2 as it relates to Code sections 4081, subdivision (a) and 4333, subdivision (a),
4 in that Respondent failed to comply with the requirements for discontinuance of a
5 business and maintenance of the records;

6 c. A violation of Code section 4301, subdivisions (j) and (o) on the grounds
7 of unprofessional conduct, in that Respondent violated CCR, title 16, section 1715.6,
8 by failing to report to the Board the burglary or theft of controlled substances from
9 Sunset Pharmacy; and

10 d. A violation of Code section 4301, subdivision (o), on the grounds of
11 unprofessional conduct, in that Respondent violated CCR, title 16, section 1704 by
12 failing to notify the Board of any and all changes of residence address within 30 days.

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ORDER

IT IS SO ORDERED that Pharmacy Permit Number PHY 51210, heretofore issued to Respondent Tom Thanh Nguyen as the Individual Licensed Owner and Pharmacist-In-Charge, doing business as Sunset Pharmacy, is hereby REVOKED.

IT IS FURTHER ORDERED that Pharmacist License Number RPH 66162, heretofore issued to Respondent Tom Thanh Nguyen, is hereby REVOKED.

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

This Decision shall become effective at 5:00 p.m. on September 5, 2018.

It is so ORDERED on August 6, 2018.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
Victor Law, R.Ph.
Board President

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 XAVIER BECERRA
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 KEVIN W. BELL
Deputy Attorney General
4 State Bar No. 192063
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-7511
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12
13 .In the Matter of the Accusation Against:

Case No. 6159

14 **TOM THANH NGUYEN, OWNER,**
15 **PHARMACIST-IN-CHARGE, DBA**
SUNSET PHARMACY
3101 Sunset Boulevard, Suite 4C
16 Rocklin, CA 95677

A C C U S A T I O N

17 **Pharmacy Permit No. PHY 51210**

18 **and**

19 **TOM THANH NGUYEN**
P.O. Box 580418
20 Elk Grove, CA 95758

21 **Pharmacist Permit No. RPH 66162,**

22 Respondents.
23
24

25 Virginia Herold ("Complainant") alleges:

26 **PARTIES**

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

1 licensee shall not deprive the board of jurisdiction to commence or proceed with any
2 investigation of, or action or disciplinary proceeding against, the licensee or to render
3 a decision suspending or revoking the license.

4 **STATUTORY AND REGULATORY PROVISIONS**

5 7. Code section 4081 states, in pertinent part:

6 (a) All records of manufacture and of sale, acquisition, or disposition of
7 dangerous drugs or dangerous devices shall be at all times during business hours open
8 to inspection by authorized officers of the law, and shall be preserved for at least
9 three years from the date of making. A current inventory shall be kept by every
10 manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician,
11 dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or
12 establishment holding a currently valid and unrevoked certificate, license, permit,
13 registration, or exemption under Division 2 (commencing with Section 1200) of the
14 Health and Safety Code or under Part 4 (commencing with Section 16000) of
15 Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous
16 drugs or dangerous devices.

17 (b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary
18 food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge
19 or representative-in-charge, for maintaining the records and inventory described in
20 this section. . . .

21 8. Code section 4113, subdivision (c), states that “[t]he pharmacist-in-charge shall be
22 responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining
23 to the practice of pharmacy.”

24 9. Code section 4301 states, in pertinent part:

25 The board shall take action against any holder of a license who is guilty of
26 unprofessional conduct or whose license has been issued by mistake. Unprofessional
27 conduct shall include, but is not limited to, any of the following:

28

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

(o) 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. . . .

10. Code section 4307(a) provides:

Any person who has been denied a license or whose license has been revoked
or is under suspension, or who has failed to renew his or her license while it was

1 under suspension, or who has been a manager, administrator, owner, member, officer,
2 director, associate, partner, or any other person with management or control of any
3 partnership, corporation, trust, firm, or association whose application for a license has
4 been denied or revoked, is under suspension or has been placed on probation, and
5 while acting as the manager, administrator, owner, member, officer, director,

6 associate, partner, or any other person with management or control had knowledge of
7 or knowingly participated in any conduct for which the license was denied, revoked,
8 suspended, or placed on probation, shall be prohibited from serving as a manager,
9 administrator, owner, member, officer, director, associate, partner, or in any other
10 position with management or control of a licensee as follows:

11 (1) Where a probationary license is issued or where an existing license is placed
12 on probation, this prohibition shall remain in effect for a period not to exceed five
13 years.

14 (2) Where the license is denied or revoked, the prohibition shall continue until
15 the license is issued or reinstated.

16 11. Code section 4333 states, in pertinent part, that all prescriptions filled by a pharmacy
17 and all other records required by Section 4081 shall be maintained on the premises and available
18 for inspection by authorized officers of the law for a period of at least three years. In cases where
19 the pharmacy discontinues business, these records shall be maintained in a board-licensed facility
20 for at least three years.

21 12. Health and Safety Code section 11165, subdivision (d) states:

22 For each prescription for a Schedule II, Schedule III, or Schedule IV controlled
23 substance, as defined in the controlled substances schedules in federal law and
24 regulations, specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of
25 Title 21 of the Code of Federal Regulations, the dispensing pharmacy, clinic, or other
26 dispenser shall report the following information to the Department of Justice as soon
27 as reasonably possible, but not more than seven days after the date a controlled
28 substance is dispensed, in a format specified by the Department of Justice:

(1) Full name, address, and, if available, telephone number of the ultimate user
or research subject, or contact information as determined by the Secretary of the
United States Department of Health and Human Services, and the gender, and date of
birth of the ultimate user.

(2) The prescriber's category of licensure, license number, national provider
identifier (NPI) number, if applicable, the federal controlled substance registration
number, and the state medical license number of any prescriber using the federal
controlled substance registration number of a government-exempt facility.

(3) Pharmacy prescription number, license number, NPI number, and federal
controlled substance registration number.

(4) National Drug Code (NDC) number of the controlled substance dispensed.

1 (5) Quantity of the controlled substance dispensed.

2 (6) International Statistical Classification of Diseases, 9th revision (ICD-9) or
3 10th revision (ICD-10) Code, if available.

4 (7) Number of refills ordered.

5 (8) Whether the drug was dispensed as a refill of a prescription or as a first-time
6 request.

7 (9) Date of origin of the prescription.

8 (10) Date of dispensing of the prescription.

9 13. California Code of Regulations ("CCR"), title 16, section 1704 states:

10 Each person holding a certificate, license, permit, registration or exemption to
11 practice or engage in any activity in the State of California under any and all laws
12 administered by the Board shall file a proper and current residence address with the
13 Board at its office in Sacramento and shall within 30 days notify the Board at its said
14 office of any and all changes of residence address, giving both the old and new
15 address.

16 14. CCR, title 16, section 1708.2 states:

17 Any permit holder shall contact the board prior to transferring or selling any
18 dangerous drugs, devices or hypodermics inventory as a result of termination of
19 business or bankruptcy proceedings and shall follow official instructions given by the
20 board applicable to the transaction.

21 15. CCR, title 16, section 1715.6 states "[t]he owner shall report to the Board within
22 thirty (30) days of discovery of any loss of the controlled substances, including their amounts and
23 strengths."

24 16. CCR, title 16, section 1714, subdivision (b) states:

25 Each pharmacy licensed by the board shall maintain its facilities, space,
26 fixtures, and equipment so that drugs are safely and properly prepared, maintained,
27 secured and distributed. The pharmacy shall be of sufficient size and unobstructed
28 area to accommodate the safe practice of pharmacy.

17. CCR, title 16, section 1718 states:

"Current Inventory" as used in Sections 4081 and 4332 of the Business and
Professions Code shall be considered to include complete accountability for all
dangerous drugs handled by every licensee enumerated in Sections 4081 and 4332.

The controlled substances inventories required by Title 21, CFR, Section 1304
shall be available for inspection upon request for at least 3 years after the date of the
inventory.

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1 **COST RECOVERY**

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

6 **BACKGROUND**

7 19. On or about April 8, 2016, the Board received a complaint from C.T. alleging the
8 following: Respondent scammed C.T. into loaning him \$100,000 to open pharmacy stores in
9 California and Nevada; Respondent staged two burglaries in order to sell controlled substances to
10 Vietnam; and Respondent informed C.T. that he had multiple investors to assist with selling drugs
11 to and from the United States, Vietnam, Laos and Cambodia.

12 20. On or about April 14, 2016, the Board opened an investigation into the allegations
13 made by C.T.

14 **INSPECTION OF MAY 4, 2012 / BOARD INVESTIGATION**

15 21. On or about May 4, 2016, Board Inspectors P.P. and J.H. went to Sunset Pharmacy
16 located at 3101 Sunsent Boulevard, Suite 4C in Rocklin, California. Upon arrival, the inspectors
17 realized another business, Sunshine Nails, was in the location where Sunset Pharmacy was
18 supposed to be located. The inspectors entered Sunshine Nails and spoke with an employee who
19 stated Sunset Pharmacy had been out of business for approximately one (1) year.

20 22. On or about May 4, 2016, Board Inspector J.H. contacted the Board to determine
21 whether Respondent submitted a Discontinuance of Business ("DOB") and the Board confirmed
22 they have no such record of Sunset Pharmacy closing.

23 23. On or about May 10, 2016, Board Inspector J.H. requested from the Board the
24 CURES report and compliance report for Sunset Pharmacy. No CURES data was located by the
25 Board for Sunset Pharmacy during the time it was open for business, April 24, 2013 through
26 December 23, 2014.

27 24. On or about May 10, 2016, Board Inspector J.H. received a telephone call from
28 Respondent admitting that Sunset Pharmacy closed on December 23, 2014; Respondent placed all

1 remaining drugs in his inventory, including controlled substances and records, in a storage unit in
2 Rocklin, California; and Respondent did not have enough time to look for other options because
3 he “had a plane to catch in Asia;”

4 25. On or about May 18, 2016, Respondent submitted his DOB form to Board
5 Inspector J.H. via email indicating his business closed on December 23, 2014. Respondent’s
6 DOB submission was two years and 116 days past due. The DOB stated that all records were
7 stored at Rocklin Storage in Rocklin, California. Respondent listed his address on the DOB as
8 8760 Center Parkway, #241 in Elk Grove, California rather than the address of record with the
9 Board of his P.O. Box or physical address of 6284 Lone Tree Boulevard in Rocklin, California. In
10 his email, Respondent admitted that he did not have a list of inventory for the drugs stored in
11 storage unit.

12 26. On or about November 28, 2013, Respondent made a report to the Rocklin Police
13 Department of a burglary at Sunset Pharmacy where the following drugs were reported as taken:
14 five (5) bottles of promethazine with codeine and four (4) bottles of promethazine DM.

15 27. On or about July 4, 2014, Respondent made a report to the Rocklin Police
16 Department of a burglary at Sunset Pharmacy where the it was reported that a couple of bottles of
17 promethazine with codeine were taken.

18 19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Failure to Report Controlled Substances to CURES)**

21 28. Respondent’s pharmacy permit and pharmacist’s license are subject to disciplinary
22 action under to Code section 4301, subdivision (j) and (o), on the grounds of unprofessional
23 conduct, in that Respondent violated Health and Safety Code section 11165, subdivision (d) as
24 follows: Respondent failed to report to CURES¹ any Schedule II, III, and IV controlled
25 substances dispensed during the time Sunset Pharmacy was open for business (April 24, 2013
26 through December 23, 2014).

27
28 ¹ CURES is California’s Prescription Drug Monitoring Program for controlled substances.
The program requires weekly reporting of all Schedule II – IV controlled substances.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain a Facility to Safely Store Drugs)**

3 29. Respondent's pharmacy permit and pharmacist's license are subject to disciplinary
4 action under Code sections 4301, subdivision (o), on the grounds of unprofessional conduct, in
5 that Respondent violated CCR, title 16, section 1714(b), in that Respondent failed to comply with
6 the requirements to maintain a facility, space, fixtures, and equipment so that drugs are safely and
7 properly secured as more particularly set forth above in paragraphs 24 and 25.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Discontinuance of Business and Maintenance of Records)**

10 30. Respondent's pharmacy permit and pharmacist's license are subject to disciplinary
11 action under Code sections 4301, subdivisions (j) and (o), on the grounds of unprofessional
12 conduct, in that Respondent violated CCR, title 16, section 1708.2 as it relates to Code
13 sections 4081, subdivision (a) and 4333, subdivision (a), in that Respondent failed to comply with
14 the requirements for discontinuance of a business and maintenance of the records, as more
15 particularly set forth above in paragraphs 24 and 25.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Failure to Report Drug Loss)**

18 31. Respondent's pharmacy permit and pharmacist's license are subject to disciplinary
19 action under to Code section 4301, subdivisions (j) and (o) on the grounds of unprofessional
20 conduct in that Respondent violated CCR, title 16, section 1715.6, by failing to report to the
21 Board the burglary or theft of controlled substances from Sunset Pharmacy on November
22 28, 2013, and July 4, 2014, as more particularly set forth above in paragraphs 26 and 27.

23 **FIFTH CAUSE FOR DISCIPLINE**

24 **(Failure to Notify of Change of Address)**

25 32. Respondent's pharmacist's license is subject to disciplinary action under Code
26 section 4301, subdivision (o), on the grounds of unprofessional conduct in that Respondent
27 violated CCR, title 16, section 1704 by failing to notify the Board of any and all changes of
28 residence address within 30 days, as more particularly set forth above in paragraph 25.

1 OTHER MATTERS

2 33. Pursuant to Code section 4307, if discipline is imposed on Pharmacy Permit Number
3 PHY 51210 issued to Sunset Pharmacy, with Tom Thanh Nguyen as the Individual Licensed
4 Owner and PIC, Sunset Pharmacy, with Tom Thanh Nguyen as the Individual Licensed Owner
5 and PIC shall be prohibited from serving as a manager, administrator, owner, member, officer,
6 director, associate, or partner of a licensee for five years if Pharmacy Permit Number PHY 51210
7 is placed on probation or until Pharmacy Permit Number PHY 51210 is reinstated if it is revoked.

8 34. Pursuant to Code section 4307, if discipline is imposed on Pharmacist License
9 Number RPH 66162 issued to Tom Thanh Nguyen, while Tom Thanh Nguyen has been an officer
10 and owner and had knowledge of or knowingly participated in any conduct for which the license
11 was disciplined, Tom Thanh Nguyen shall be prohibited from serving as a manager,
12 administrator, owner, member, officer, director, associate, or partner of a licensee for five years if
13 Pharmacist License Number RPH 66162 is placed on probation or until Pharmacist License
14 Number RPH 66162 is reinstated if it is revoked.

15 PRAYER

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

18 1. Revoking or suspending Pharmacist License Number RPH 66162, issued to Tom
19 Thanh Nguyen;

20 2. Revoking or suspending Pharmacy License Number PHY 51210, issued to Tom
21 Thanh Nguyen doing business as Sunset Pharmacy;

22 3. Prohibiting Tom Thanh Nguyen from serving as a manager, administrator, owner,
23 member, officer, director, associate, or partner of a licensee for five years if Pharmacy Permit
24 Number PHY 51210 is placed on probation or until Pharmacy Permit Number PHY 51210 is
25 reinstated if it is revoked;

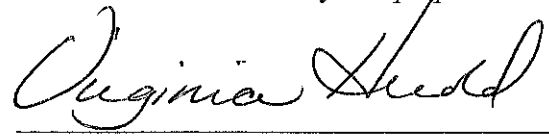
26 4. Prohibiting Tom Thanh Nguyen from serving as a manager, administrator, owner,
27 member, officer, director, associate, or partner of a licensee for five years if Pharmacist License
28

1 Number RPH 66162 is placed on probation or until Pharmacist License Number RPH 66162 is
2 reinstated if it is revoked;

3 5. Ordering Tom Thanh Nguyen to pay the Board the reasonable costs of the
4 investigation and enforcement of this case, pursuant to Code section 125.3; and,

5 6. Taking such other and further action as deemed necessary and proper.

6
7 DATED: 10/7/17



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

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12 SunsetPharmacyAccusation.docx

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