

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
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. 3912

11 **BAILEY LIU**
12 **25 Galilee Lane, # 3**
13 **San Francisco, CA 94115**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 77630**

15 Respondent.

16 Complainant alleges:

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18 PARTIES

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

21 2. On or about September 6, 2007, the Board of Pharmacy issued Pharmacy Technician
22 License No. TCH 77630 to Bailey Liu (Respondent). The License was in full force and effect at
23 all times relevant to the charges herein and will expire on December 31, 2012, unless renewed.

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25 JURISDICTION

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

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

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

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

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

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

16 11. Health and Safety Code section 11170 provides that no person shall prescribe,
17 administer, or furnish a controlled substance for himself or herself.

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

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

25 COST RECOVERY

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

1 21. The exact number of instances of diversion/theft by Respondent, and the full quantity
2 of controlled substances or dangerous drugs diverted/stolen, are not known, but in the course of
3 investigations conducted by Walgreens and by police, the following were reported:

4 a. On or prior to March 15, 2010, one or more supervisors and/or members of the
5 Walgreens Loss Prevention staff received an anonymous tip stating that Respondent had been
6 stealing "pain killers" from the stock of Walgreens pharmacies for the past 2-3 years.

7 b. When confronted, Respondent subsequently admitted to Loss Prevention that
8 he had been diverting/stealing 3-4 **Hydrocodone with APAP 5/500** tablets, once or twice a week,
9 for the past six (6) months, for his own use. During his interview, Respondent identified three (3)
10 stores where he had worked as a floater technician and diverted/stole **Hydrocodone with APAP**.
11 Respondent further admitted to diverting/stealing five (5) tablets of **Viagra**, which he sold for a
12 total of \$100.00 (\$20.00 for each tablet). Loss Prevention calculated Respondent's admitted theft
13 to be 192 tablets of **Hydrocodone with APAP 5/500** (retail: \$128.64) and 5 tablets of **Viagra**
14 (retail; \$115.19), for a total retail value of the admitted theft of \$243.83.

15 c. Subsequent audit(s) by Loss Prevention and/or pharmacy staff of the controlled
16 substance stocks of seven (7) Walgreens Pharmacy stores at which Respondent had worked as a
17 pharmacy technician revealed shortages including: 966 tablets **Hydrocodone with APAP 5/500**
18 at Walgreens #3624 (PHY 44989); 375 tablets **Hydrocodone with APAP 5/500** and 32 tablets
19 **Hydrocodone with APAP 7.5/500** at Walgreens #3358 (PHY 40652); 324 tablets **Hydrocodone**
20 **with APAP 10/500** at Walgreens #5599 (PHY 44955); 938 tablets **Hydrocodone with APAP**
21 **10/500** at Walgreens #3383 (PHY 41649); 1,034 tablets **Hydrocodone with APAP 5/500** at
22 Walgreens #11385 (PHY 48579); 154 tablets **Hydrocodone with APAP 5/500** and 445 tablets
23 **Hydrocodone with APAP 10/325** at Walgreens #5487 (PHY 44589); 311 tablets **Hydrocodone**
24 **with APAP 7.5/500** at Walgreens #3707 (PHY 40791), for a total documented shortage/loss of
25 approximately 4,579 tablets of **Hydrocodone** drug products where Respondent worked.

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FIRST CAUSE FOR DISCIPLINE

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

22. Respondent is subject to discipline under section 4301(f) of the Code, in that Respondent, as described in paragraphs 19 to 21 above, committed numerous acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

SECOND CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substance)

23. Respondent is subject to discipline under section 4301(h) of the Code, in that Respondent, as described in paragraphs 19 to 21 above, administered one or more controlled substances to himself, including **Hydrocodone with APAP** products.

THIRD CAUSE FOR DISCIPLINE

(Furnishing of Controlled Substance(s))

24. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described in paragraphs 19 to 21 above, furnished to himself or another, and/or conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance/dangerous drug, without a prescription.

FOURTH CAUSE FOR DISCIPLINE

(Possession of Controlled Substance(s))

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

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1 FIFTH CAUSE FOR DISCIPLINE

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

3 26. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
4 and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
5 19 to 21 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
6 controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.

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8 SIXTH CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct)

10 27. Respondent is subject to discipline under section 4301 of the Code in that
11 Respondent, as described in paragraphs 19 to 26 above, engaged in unprofessional conduct.

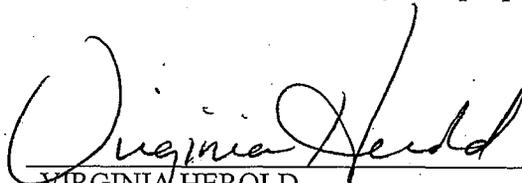
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13 PRAYER

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

- 16 1. Revoking or suspending Pharmacy Technician License Number TCH 77630, issued
- 17 to Bailey Liu (Respondent);
- 18 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
- 19 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 20 3. Taking such other and further action as is deemed necessary and proper.

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23 DATED: _____

4/7/11



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

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