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

11 In the Matter of the Accusation Against:

Case No. 3665

12 **TUNG THANH NGUYEN**  
13 **3984 Pine Lake Circle**  
**Stockton, California 95219**

**A C C U S A T I O N**

14 **Pharmacy Technician Registration No.**  
15 **TCH 54215.**

16 Respondent.

17  
18  
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about February 4, 2004, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 54215 to Tung Thanh Nguyen (Respondent). The license was in full  
25 force and effect at all times mentioned herein, and will expire on January 31, 2012, unless  
26 renewed.

JURISDICTION

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

4. Section 4300 of the Code states in pertinent part:

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

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

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

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

"(4) Revoking his or her license.

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

...

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

5. Section 4301 of the Code states in pertinent part:

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

...

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

4           ...

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

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

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Criminal Conviction)**

3 7. Respondent is subject to disciplinary action for unprofessional conduct under section  
4 4301(l) that he has been convicted of the following crime that is substantially related to the  
5 qualifications, functions, and duties of a pharmacy technician:

6 a. On February 24, 2009, in the Superior Court, Placer County, California, in the  
7 case entitled *People of the State of California v. Tung Thanh Nguyen aka Tung Nguyen*, Case No.  
8 62-86341, Respondent was convicted by the court following his plea of Nolo Contendere to a  
9 violation of Penal Code section 459 (second degree commercial burglary) a felony. The  
10 circumstances are as follows: On November 20, 2008, respondent was caught attempting to steal  
11 two cartons of cigarettes from Costco in Roseville, California. A search of respondent's vehicle  
12 uncovered additional cartons of various brands of cigarettes with no proof of purchase. The  
13 investigation further revealed that respondent's cell phone contained numerous text messages that  
14 appeared to be "orders" for the cartons of cigarettes found in his vehicle. During the  
15 investigation, respondent repeatedly lied to the investigating officer.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Acts of Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

18 8. Respondent is subject to disciplinary action for unprofessional conduct under section  
19 4301(f) for acts of moral turpitude, dishonesty, fraud, deceit, or corruption as set forth in  
20 paragraph 7(a) above.

21 **PRAYER**

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

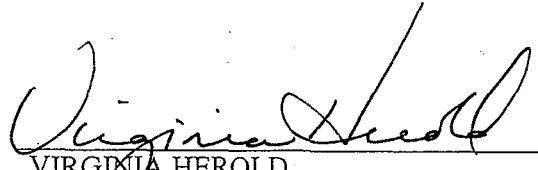
24 1. Revoking or suspending Pharmacy Technician Registration Number TCH 54215,  
25 issued to Tung Thanh Nguyen.  
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2. Ordering Tung Thanh Nguyen to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 5/6/10



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

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accusation.rtf