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

12 In the Matter of the Accusation Against:

Case No. 3786

13 **NOU CHAI THAO**
P. O. Box 233465
Sacramento, CA 95823

A C C U S A T I O N

14 Pharmacy Technician Registration
Number TCH 78290

15 Respondent.

16
17 Complainant alleges:

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 October 4, 2007, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 78290 to Nou Chai Thao ("Respondent"). The license was in full
23 force and effect at all times relevant to the charges brought herein and will expire on July 31,
24 2011, unless renewed.

25 **JURISDICTION**

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

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

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

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

5 (1) Suspending judgment.

6 (2) Placing him or her upon probation.

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

9 (4) Revoking his or her license.

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

11 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
12 surrender, or cancellation of a license shall not deprive the Board/Registrar/Director of
13 jurisdiction to proceed with a disciplinary action during the period within which the license may
14 be renewed, restored, reissued or reinstated.

15 **STATUTORY PROVISIONS**

16 6. Section 4301 of the Code states, in pertinent part:

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

20 (1) The conviction of a crime substantially related to the qualifications,
functions, and duties of a licensee under this chapter. The record of conviction of
21 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
States Code regulating controlled substances or of a violation of the statutes of this
22 state regulating controlled substances or dangerous drugs shall be conclusive
evidence of unprofessional conduct. In all other cases, the record of conviction
23 shall be conclusive evidence only of the fact that the conviction occurred. The
board may inquire into the circumstances surrounding the commission of the
24 crime, in order to fix the degree of discipline or, in the case of a conviction not
involving controlled substances or dangerous drugs, to determine if the conviction
25 is of an offense substantially related to the qualifications, functions, and duties of a
licensee under this chapter. A plea or verdict of guilty or a conviction following a
26 plea of nolo contendere is deemed to be a conviction within the meaning of this
provision. The board may take action when the time for appeal has elapsed, or the
27 judgment of conviction has been affirmed on appeal or when an order granting
probation is made suspending the imposition of sentence, irrespective of a
28 subsequent order under Section 1203.4 of the Penal Code allowing the person to

1 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
2 the verdict of guilty, or dismissing the accusation, information, or indictment.

3 7. Section 490 of the Code states, in pertinent part:

4 (a) In addition to any other action that a board is permitted to take against
5 a licensee, a board may suspend or revoke a license on the ground that the licensee
6 has been convicted of a crime, if the crime is substantially related to the
7 qualifications, functions, or duties of the business or profession for which the
8 license was issued.

9 (b) Notwithstanding any other provision of law, a board may exercise any
10 authority to discipline a licensee for conviction of a crime that is independent of the
11 authority granted under subdivision (a) only if the crime is substantially related to
12 the qualifications, functions, or duties of the business or profession for which the
13 licensee's license was issued.

14 (c) A conviction within the meaning of this section means a plea or verdict
15 of guilty or a conviction following a plea of nolo contendere. Any action that a
16 board is permitted to take following the establishment of a conviction may be taken
17 when the time for appeal has elapsed, or the judgment of conviction has been
18 affirmed on appeal, or when an order granting probation is made suspending the
19 imposition of sentence, irrespective of a subsequent order under the provisions of
20 Section 1203.4 of the Penal Code.

21 COST RECOVERY

22 7. 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.

26 CAUSE FOR DISCIPLINE

27 (Criminal Conviction)

28 8. Respondent is subject to disciplinary action under Code sections 4300, 4301,
subdivision (l), and 490 in that on or about January 12, 2010, he was convicted on his plea of nolo
contendere in the case titled *People v. Nou Chai Thao*, Sacramento County Superior Court Case
No. 09T06548 for violating Vehicle Code section 23152, subdivision (b), [driving a motor
vehicle with a blood alcohol content (BAC) of 0.08% or more] and admitted allegations of having
a BAC of 0.15% pursuant to Vehicle Code section 23578, a misdemeanor. Said crime is
substantially related to the qualifications, functions, and duties of a licensed Pharmacy
Technician. The circumstances are as follows:

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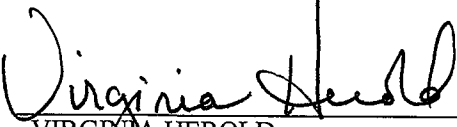
1 a. On or about October 15, 2009, Respondent drove his motor vehicle at a high rate of
2 speed on Northbound Watt Avenue, Sacramento. He was stopped by a law enforcement officer
3 who observed Respondent's objective signs of alcohol intoxication. Respondent unsuccessfully
4 performed three Field Sobriety Tests (FSTs) before he refused to perform further FSTs.
5 Respondent submitted to a blood test which measured .19% BAC.

6 **PRAYER**

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

- 9 1. Revoking or suspending Pharmacy Technician License Number TCH 78290, issued
10 to Nou Chai Thao;
- 11 2. Ordering Nou Chai Thao to pay the Board of Pharmacy the reasonable costs of the
12 investigation and enforcement of this case, pursuant to Business and Professions Code section
13 125.3; and,
- 14 3. Taking such other and further action as deemed necessary and proper.

15
16 DATED: 1/4/11


17 VIRGINIA HEROLD
18 Executive Officer
19 Board of Pharmacy
20 Department of Consumer Affairs
21 State of California
22 Complainant

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