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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. 3833

12 **PHILLIP LUU**  
13 20840 Community St., #2  
14 Winnetka, CA 91306

**ACCUSATION**

15 Pharmacy Technician License No. TCH 79928

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).  
22 2. On or about December 3, 2007, the Board issued Pharmacy Technician License No.  
23 TCH 79928 to Phillip Luu (Respondent). The Pharmacy Technician License was in full force and  
24 effect at all times relevant to the charges brought herein and will expire on November 30, 2011,  
25 unless renewed.

26 **JURISDICTION**

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

STATUTORY PROVISIONS

1  
2       4.     Section 490 provides that a board may suspend or revoke a license on the ground that  
3 the licensee has been convicted of a crime substantially related to the qualifications, functions, or  
4 duties of the business or profession for which the license was issued.

5       5.     Section 492 states:

6             "Notwithstanding any other provision of law, successful completion of any diversion  
7 program under the Penal Code, or successful completion of an alcohol and drug problem  
8 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of  
9 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2  
10 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that  
11 division, from taking disciplinary action against a licensee or from denying a license for  
12 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a  
13 record pertaining to an arrest.

14             "This section shall not be construed to apply to any drug diversion program operated by any  
15 agency established under Division 2 (commencing with Section 500) of this code, or any  
16 initiative act referred to in that division."

17       6.     Section 4060 states:

18             "No person shall possess any controlled substance, except that furnished to a person upon  
19 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
20 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
21 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
22 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
23 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
24 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not  
25 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
26 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
27 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
28 labeled with the name and address of the supplier or producer.

1 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a  
2 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs  
3 and devices."

4 7. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or  
5 revoked."

6 8. Section 4301 states, in pertinent part:

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

10 . . . .

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

14 . . . .

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

20 . . . .

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

23 . . . .

24 "(l) The conviction of a crime substantially related to the qualifications, functions, and  
25 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
26 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
27 substances or of a violation of the statutes of this state regulating controlled substances or  
28 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the

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

### 13 REGULATORY PROVISION

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

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

### 21 COST RECOVERY

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

### 26 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

27 11. Vicodin is the trade name for the narcotic substance hydrocodone with the non-  
28 narcotic substance acetaminophen, is a Schedule III controlled substance pursuant to Health and

1 Safety Code section 11056(e)(4), and is a dangerous drug within the meaning of section 4022.

2 12. Xanax, a brand name for alprazolam, is a Schedule IV controlled substance pursuant  
3 to Health and Safety Code section 11057(d)(1), and is a dangerous drug within the meaning of  
4 section 4022.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Conviction of a Substantially Related Crime)**

7 13. Respondent is subject to disciplinary action under sections 490, 4300, and section  
8 4301, subdivision (l), of the Code on the grounds of unprofessional conduct, in conjunction with  
9 California Code of Regulations, title 16, section 1770, in that on or about July 23, 2010,  
10 Respondent was convicted of a crime substantially related to the qualifications, functions or  
11 duties of a registered pharmacy technician which to a substantial degree evidences his present or  
12 potential unfitness to perform the functions authorized by his registration in a manner consistent  
13 with the public health, safety, or welfare, as follows:

14 a. On or about July 23, 2010, after pleading nolo contendere, Respondent was convicted  
15 of one misdemeanor count of violating Vehicle Code section 23152(b) [driving with a 0.08%  
16 blood alcohol level or more, to wit, 0.10%] in the criminal proceeding entitled *the People of the*  
17 *State of California v. Phillip Luu* (Super. Ct. Los Angeles County, 2010, No. 0VY02688). The  
18 Court sentenced Respondent to 13 days in jail, placed him on 36 months of probation, ordered  
19 him to complete 11 days of Cal Trans duty in lieu of fines, and ordered him to complete a 3-  
20 month 1<sup>st</sup> Offender Alcohol Program.

21 b. The circumstances underlying the conviction are that on or about May 21, 2010,  
22 Respondent drove a vehicle while having a tested blood alcohol level of 0.11/0.10%.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Dangerous Use of Alcoholic Beverages)**

25 14. Respondent is subject to disciplinary action under sections 4300 and 4301,  
26 subdivision (h), of the Code on the grounds of unprofessional conduct, in that on or about May  
27 21, 2010, Respondent used alcoholic beverages to the extent or in a manner as to be dangerous or  
28 injurious to himself or others when he drove a vehicle while under the influence of alcohol.

1 Complainant refers to and by this reference incorporates the allegations set forth above in  
2 paragraph 13, subparagraphs a and b, inclusive, as though set forth fully.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Illegal Possession of Controlled Substances)**

5 15. Respondent is subject to disciplinary action under sections 4300 and 4301,  
6 subdivision (j), of the Code on the grounds of unprofessional conduct, conjunction with section  
7 4060, in that on or about December 15, 2009, Respondent was admittedly in possession of  
8 Vicodin and Xanax, controlled substances and dangerous drugs, without valid prescriptions, as  
9 follows:

10 a. On or about December 24, 2009, after pleading guilty, Respondent was placed on  
11 three (3) years of deferred entry of judgment for a felony violation of Health and Safety code  
12 section 11350(a) [possession of a controlled substance] in the criminal proceeding entitled *The*  
13 *People of the State of California v. Phillip Luu* (Super. Ct. Los Angeles County, 2009,  
14 No. LA063968).

15 b. The circumstances underlying the crime is that on or about December 15, 2009,  
16 Respondent was in possession of 53 Vicodin tablets, and 8 Xanax tablets, without valid  
17 prescriptions.

18 **FOURTH CAUSE FOR DISCIPLINE**

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

20 16. Respondent is subject to disciplinary action under sections 4300 and 4301,  
21 subdivision (f), of the Code on the grounds of unprofessional conduct, in that Respondent  
22 committed acts involving moral turpitude, dishonesty, fraud, deceit and / or corruption.

23 Complainant refers to and by this reference incorporates the allegations set forth above in  
24 paragraphs 13 - 15, inclusive, as though set forth fully.

25 **PRAYER**

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

28 1. Revoking or suspending Pharmacy Technician License No. TCH 79928, issued to

1 Respondent;

2 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and  
3 enforcement of this case, pursuant to section 125.3; and

4 3. Taking such other and further action as deemed necessary and proper.  
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DATED: 1/27/11

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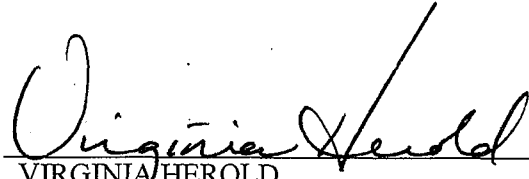
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VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

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