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

13 In the Matter of the Accusation Against:

Case No. 4021

14 **TONY MAI**
15 **5336 Oak Park Drive**
16 **San Diego, CA 92105**

A C C U S A T I O N

17 **Pharmacy Technician Registration**
18 **No. TCH 98224**

Respondent.

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 26, 2010, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 98224 to Tony Mai (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on September 30, 2011, unless renewed.

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

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of 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 state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the 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 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 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 judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. . . .

REGULATORY PROVISIONS

9. California Code of Regulations, title 16, section 1769, states:

....

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

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1 10. California Code of Regulations, title 16, section 1770, states:

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

6 **COSTS**

7 11. Section 125.3 of the Code states, in pertinent part, that the Board may request the
8 administrative law judge to direct a licensee found to have committed a violation or violations of
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
10 enforcement of the case.

11 **DRUG**

12 12. Marijuana is a Schedule I controlled substance as designated by Health and Safety
13 Code section 11054, subdivision (d)(13), and is a dangerous drug pursuant to Business &
14 Professions Code section 4022.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(May 17, 2010 Criminal Conviction for Sale of Marijuana on March 30, 2010)**

17 13. Respondent has subjected his registration to discipline under sections 490 and 4301,
18 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
19 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

20 a. On or about April 15, 2010, in a criminal proceeding entitled *People of the*
21 *State of California v. Tony Mai*, San Diego County Superior Court, case number SD226498,
22 Respondent was convicted on his plea of guilty to violating Health and Safety Code section
23 11360, subdivision (a), sale of marijuana, a felony. An additional felony count of possessing
24 marijuana for sale (Health & Saf. Code, § 11359) was dismissed pursuant to a plea agreement.

25 b. As a result of the conviction, on or about May 17, 2010, Respondent was
26 sentenced to 240 days in jail, with credit for 97 days, and ordered to serve three years formal
27 probation, which is set to expire on May 16, 2013. Respondent was further ordered to pay \$1,974
28 in fees, fines, and restitution, and to comply with felony probation terms.

1 c. The facts that led to the conviction are that the San Diego Police Department
2 had been investigating marijuana sales in the Mid City area of San Diego. On or about March 30,
3 2010, an undercover officer posed as a narcotics buyer/user in a "buy-bust" operation. The
4 officer met his identified seller in a grocery store parking lot where \$100 in pre-recorded \$20
5 dollar bills were exchanged for high grade marijuana. The seller's associate went to
6 Respondent's residence where Respondent provided the associate with the marijuana. The
7 associate returned to the parking lot and the deal was executed with the undercover officer. The
8 seller and his associate were stopped a short distance away and arrested for marijuana sales.
9 Officers also went to Respondent's house where they located the pre-recorded bills underneath
10 Respondent's bed as well as a jar containing 16.4 grams of marijuana in Respondent's closet.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Violation of State Laws Regulating Controlled Substances)**

13 14. Respondent has subjected his registration to disciplinary action under section 4301,
14 subdivision (j) of the Code for unprofessional conduct in that on or about March 30, 2010, as
15 detailed in paragraph 15, above, Respondent possessed a controlled substance for sale, which
16 violated Health and Safety Code section 11359; and he sold a controlled substance illegally,
17 which violated Health and Safety Code section 11360.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Drug-Related Felony Conviction)**

20 15. Respondent has subjected his registration to disciplinary action under sections 4301,
21 subdivision (k) of the Code for unprofessional conduct in that on or about March 30, 2010, as
22 detailed in paragraph 15, above, Respondent was convicted of a felony offense involving the sale
23 of marijuana.

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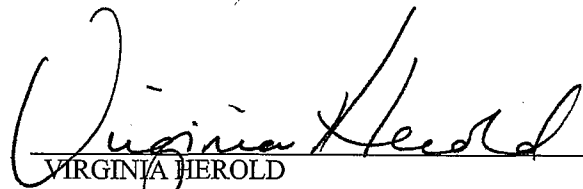
PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 98224, issued to Tony Mai;
2. Ordering Tony Mai 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: _____

8/16/11



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

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