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

11
12 In the Matter of the Accusation Against:

Case No. 4062

13 **CADEN BUI, ALSO KNOWN AS**
HUY THE BUI
14 **12831 Safford West**
Garden Grove, CA 92840

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
110405
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.
- 22 2. On or about February 11, 2011, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 110405 to Caden Bui, also known as Huy The Bui (Respondent). The
24 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
25 brought herein and will expire on August 31, 2012, unless renewed.

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JURISDICTION

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

5. Section 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

(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.

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STATUTORY PROVISIONS

6. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

8. Section 4301 of the Code states:

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:

...

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

...

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

...

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

3 ...

4 (l) The conviction of a crime substantially related to the qualifications,
5 functions, and duties of a licensee under this chapter. The record of
6 conviction of a violation of Chapter 13 (commencing with Section 801) of
7 Title 21 of the United States Code regulating controlled substances or of a
8 violation of the statutes of this state regulating controlled substances or
9 dangerous drugs shall be conclusive evidence of unprofessional conduct. In
10 all other cases, the record of conviction shall be conclusive evidence only of
11 the fact that the conviction occurred. The board may inquire into the
12 circumstances surrounding the commission of the crime, in order to fix the
13 degree of discipline or, in the case of a conviction not involving controlled
14 substances or dangerous drugs, to determine if the conviction is of an
15 offense substantially related to the qualifications, functions, and duties of a
16 licensee under this chapter. A plea or verdict of guilty or a conviction
17 following a plea of nolo contendere is deemed to be a conviction within the
18 meaning of this provision. The board may take action when the time for
19 appeal has elapsed, or the judgment of conviction has been affirmed on
20 appeal or when an order granting probation is made suspending the
21 imposition of sentence, irrespective of a subsequent order under Section
22 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
23 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty,
24 or dismissing the accusation, information, or indictment.

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16 REGULATORY PROVISIONS

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

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

22 (1) Nature and severity of the act(s) or offense(s).

23 (2) Total criminal record.

24 (3) The time that has elapsed since commission of the act(s) or
25 offense(s).

26 (4) Whether the licensee has complied with all terms of parole,
27 probation, restitution or any other sanctions lawfully imposed against the
28 licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

7 **COSTS**

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

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(February 23, 2011 Criminal Conviction for DUI on May 24, 2010)**

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

17 a. On or about February 23, 2011 in a criminal proceeding entitled *The People of*
18 *the State of California v. Caden Bui*, in Orange County Superior Court, case number
19 10WM09146, Respondent was convicted on his plea of guilty to violating Vehicle Code section
20 23152 subdivision (a), driving under the influence, a misdemeanor.

21 b. As a result of his conviction, on or about February 23, 2011, Respondent was
22 sentenced to 45 days in jail, ordered to complete an 18 month multiple offender program, and
23 ordered to pay \$747 in fines.

24 c. The facts that led to the conviction are that on or about May 24, 2010,
25 Respondent was contacted by Fountain Valley Police Department Officers while he was asleep in
26 his car. Respondent admitted to the officers that he was a little drunk. Respondent informed the

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1 officers that he had just been driving but pulled over because he was tired. Officers noticed a
2 strong smell of alcohol emanating from the vehicle and required respondent to perform several
3 field sobriety tests, which he failed. Respondent admitted to the officers that he had consumed
4 alcohol and ingested ecstasy prior to driving.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)**

7 13. Respondent has subjected his registration to disciplinary action under section 4301,
8 subdivision (h) of the Code in that on or about May 24, 2010, Respondent used alcoholic
9 beverages to an extent or in a manner that was potentially dangerous and injurious to himself and
10 to others in that he operated a motor vehicle while intoxicated, as described in paragraph 12.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct – Conviction of Alcohol-Related Criminal Offense)**

13 14. Respondent has subjected his registration to disciplinary action under section 4301,
14 subdivision (h) of the Code in that on or about February 23, 2010, Respondent was convicted of a
15 criminal offense involving the consumption and/or self-administration of alcohol, which
16 constitutes unprofessional conduct, as described in paragraph 12 above.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct – Fraud)**

19 15. Respondent has subjected his registration to disciplinary action under section 4301,
20 subdivisions (f) of the Code, for dishonesty. The circumstances are that in that on or about July 9,
21 2010, Respondent walked into a Chase Bank in Anaheim, Ca, and attempted to cash a \$4,500
22 fraudulent check. Earlier that same day Respondent had successfully cashed a fraudulent check
23 for \$4,300 in Garden Grove, Ca. When questioned about the incidents, Respondent admitted to
24 Anaheim Police officers, that he had fraudulently cashed the check in Garden Grove for \$4,300
25 and over the past months had fraudulently cashed tens of thousands of dollars in checks.

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FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Conviction of Alcohol-Related Offenses)

16. Respondent has subjected his registration to disciplinary action under section 4301, subdivision (k) of the Code in that on or about February 23, 2010, December 1, 2009, and July 21, 2006, Respondent was convicted of criminal offenses involving the consumption and/or self-administration of alcohol, which constitutes unprofessional conduct, as described in paragraphs 12, 17 and 18.

DISCIPLINE CONSIDERATIONS

17. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about July 21, 2006, in a prior criminal proceeding entitled *The People of the State of California v. Caden Bui*, in Orange County Superior Court, case number 06WM00417, Respondent was convicted of violating Vehicle Code section 23152, subdivision (a), driving under the influence of a controlled substance, a misdemeanor. As a result of his conviction Respondent was placed on three years probation, and ordered to complete a level two first time offender program.

18. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about December 1, 2009, in a prior criminal proceeding entitled *The People of the State of California v. Caden Bui* in Los Angeles County Superior Court, case number 9LT01069, Respondent was convicted of violating Vehicle Code section 23103, reckless driving, a misdemeanor. Respondent was originally charged with driving under the influence and was found to have a .07% by weight BAC, however the charge was reduced to reckless driving as a result of a plea bargain. Respondent was placed on three years probation, and ordered to serve 13 days in jail, complete an 18 month second offender program and drug education counseling, and not to drive a vehicle with any measurable amount of alcohol in his system

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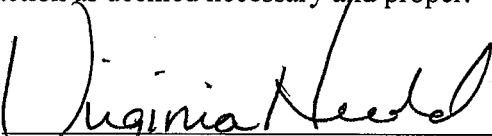
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PRAYER

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 110405, issued to Caden Bui, aka Huy The Bui;
- 2. Ordering Caden Bui 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: 9/23/11


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