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8	BEFORE THE		
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS		
10	STATE OF CALID	FORNIA	
11	In the Matter of the Accusation Against:	Case No. 4076	
12	KHOA LE PHAN		
13	1566 Coventry Avenue Clovis, CA 93611	ACCUSATION	
14	Pharmacy Technician Registration No. TCH 100624		
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 April 14, 2010, the Board of Pharmacy issued Pharmacy Technician		
22	Registration Number TCH 100624 to Khoa Le Phan (Respondent). The Pharmacy Technician		
23	Registration was in full force and effect at all times relevant to the charges brought herein and		
24	will expire on December 31, 2011, unless renewed.		
25	JURISDICTION		
26	3. This Accusation is brought before the Board of Pharmacy (Board), Department of		
27	Consumer Affairs, under the authority of the following laws. All section references are to the		
28	Business and Professions Code unless otherwise indicated.		

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4. Section 4300 of the Code states:

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

5. 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:

"(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.

"(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 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.

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

"For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the 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."

- 7. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.
- 8. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

CONTROLLED SUBSTANCE AT ISSUE

9. "Methylenedioxymethamphetamine", an analog of methamphetamine, which is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(2).

FIRST CAUSE FOR DISCIPLINE

(CRIMINAL CONVICTION)

10. Respondent is subject to disciplinary action under section 4301(l) in that on or about March 1, 2011, in a criminal proceeding entitled, *People v. Khoa Le Phan*, in the Superior Court of California, San Mateo County, Case No. SC071921, Respondent was convicted upon a plea of nolo contendere of violating Health and Safety Code section 11378 (Possession of Controlled Substance For Sale), a felony, which is substantially related to the qualifications, functions or duties as a pharmacy technician. The circumstances are as follows:

1	11. On or about May 30, 2010, Respondent did willfully and unlawfully possess for	
2	purpose of sale a controlled substance, to wit: methylenedioxymethamphetamin, an analog of	
3	methamphetamine.	
4	SECOND CAUSE FOR DISCIPLINE	
5	(CONTROLLED SUBSTANCE VIOLATION)	
6	12. Respondent is subject to disciplinary action under section 4301(j), by possessing for	
7	sale a controlled substance as specified in paragraph 10 above.	
8	PRAYER	
9	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,	
10	and that following the hearing, the Board of Pharmacy issue a decision:	
11	1. Revoking or suspending Pharmacy Technician Registration Number TCH 100624,	
12	issued to Khoa Le Phan.;	
13	2. Ordering Khoa Le Phan to pay the Board of Pharmacy the reasonable costs of the	
14	investigation and enforcement of this case, pursuant to Business and Professions Code section	
15	125.3;	
16	3. Taking such other and further action as deemed necessary and proper.	
17	DATED: 11/9/11)ininia Hereld	
18	VIRGINIA HEROLD	
19	Executive Officer Board of Pharmacy	
20	Department of Consumer Affairs State of California	
21	Complainant	
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