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

12 In the Matter of the Accusation Against:	Case No. 4162
13 HAO VAN PHAN 9816 Howland Drive 14 Temple City, CA 91780	ACCUSATION
15 Pharmacy Technician License No. TCH 86000	
16 Respondent.	

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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 (Board).
- 23 2. On or about August 29, 2008, the Board issued Pharmacy Technician License No.
24 TCH 86000 to Hao Van Phan (Respondent). The Pharmacy Technician License was in full force
25 and effect at all times relevant to the charges brought herein and will expire on March 31, 2012,
26 unless renewed.

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1 JURISDICTION

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

4 STATUTORY PROVISIONS

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

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

12 6. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or
13 revoked."

14 7. Section 4301 states, in pertinent part:

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

18 ...

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

21 ...

22 "(l) The conviction of a crime substantially related to the qualifications, functions, and
23 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
24 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
25 substances or of a violation of the statutes of this state regulating controlled substances or
26 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
27 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
28 The board may inquire into the circumstances surrounding the commission of the crime, in order

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

11 **REGULATORY PROVISION**

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

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

19 **COST RECOVERY**

20 9. Section 125.3 provides that the Board may request the administrative law judge to
21 direct a licentiate found to have committed a violation or violations of the licensing act to pay a
22 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

23 **CONTROLLED SUBSTANCE**

24 10. Methylenedioxyamphetamine (MDMA), having the street name of "Ecstasy," is
25 a Schedule I controlled substance as defined in Health and Safety Code sections 11054,
26 subdivision (d), and 11401. Schedule I substances have a high potential for abuse and have no
27 currently accepted medical use in treatment in the United States.

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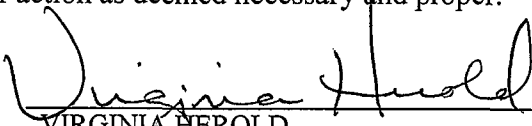
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PRAYER

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

1. Revoking or suspending Pharmacy Technician License No. TCH 86000, issued to Hao Van Phan;
2. Ordering Hao Van Phan to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 3/19/12



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

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