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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. 4219

13 **DENNIS QUOC NGUYEN HO**  
14 **1146 Nakomo Drive**  
**Santa Ana, CA 92704**  
15 **Pharmacy Technician Registration No. TCH 86377**

**A C C U S A T I O N**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official  
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 21 2. On or about September 10, 2008, the Board of Pharmacy issued Pharmacy  
22 Technician Registration Number TCH 86377 to Dennis Quoc Nguyen Ho (Respondent). The  
23 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges  
24 brought herein and will expire on March 31, 2014, 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 (Code) unless otherwise indicated.



1 related to the qualifications, functions, or duties of the business or profession for which the  
2 license was issued.

3 8. Section 493 of the Code states:

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

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

17 9. Section 4022 of the Code states

18 "Dangerous drug" or "dangerous device" means any drug or device unsafe  
19 for self-use in humans or animals, and includes the following:

20 (a) Any drug that bears the legend: "Caution: federal law prohibits  
21 dispensing without prescription," "Rx only," or words of similar import.

22 (b) Any device that bears the statement: "Caution: federal law restricts  
23 this device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of  
24 similar import, the blank to be filled in with the designation of the practitioner  
25 licensed to use or order use of the device.

26 (c) Any other drug or device that by federal or state law can be  
27 lawfully dispensed only on prescription or furnished pursuant to Section 4006.

28 10. Section 4060 of the Code states:

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

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

4            11.    Section 4301 of the Code states:

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

9            . . . .  
10            (j)    The violation of any of the statutes of this state, or any other state,  
11 or of the United States regulating controlled substances and dangerous drugs.

12            . . . .  
13            (l)    The conviction of a crime substantially related to the  
14 qualifications, functions, and duties of a licensee under this chapter. The record  
15 of conviction of a violation of Chapter 13 (commencing with Section 801) of Title  
16 21 of the United States Code regulating controlled substances or of a violation of  
17 the statutes of this state regulating controlled substances or dangerous drugs shall  
18 be conclusive evidence of unprofessional conduct. In all other cases, the record  
19 of conviction shall be conclusive evidence only of the fact that the conviction  
20 occurred. The board may inquire into the circumstances surrounding the  
21 commission of the crime, in order to fix the degree of discipline or, in the case of  
22 a conviction not involving controlled substances or dangerous drugs, to determine  
23 if the conviction is of an offense substantially related to the qualifications,  
24 functions, and duties of a licensee under this chapter. A plea or verdict of guilty  
25 or a conviction following a plea of nolo contendere is deemed to be a conviction  
26 within the meaning of this provision. The board may take action when the time  
27 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal  
28 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.

          . . . .  
          (p)    Actions or conduct that would have warranted denial of a license.  
          . . . .

12.    Health & Safety Code section 11357, subdivision (c) states:

          Except as authorized by law, every person who possesses more than 28.5  
grams of Marijuana, other than concentrated cannabis, shall be punished by  
imprisonment in a county jail for a period of not more than six months or by a  
fine of not more than five hundred dollars (\$500), or by both such fine and  
imprisonment.

1 **REGULATORY PROVISIONS**

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

3 .....

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

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

9 (2) Total criminal record.

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

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

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

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

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

23 **COST RECOVERY**

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

28 **DRUG**

16. Cannabinoids (Marijuana) are dangerous drugs pursuant to section 4022 and are  
Schedule I controlled substances as designated by Health and Safety Code section 11054,  
subdivision (d)(13).

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1 FIRST CAUSE FOR DISCIPLINE

2 (November 2, 2011 Conviction for Possession of More Than 28.5 Grams of Marijuana on  
3 March 20, 2011)

4 17. Respondent subjected his license to discipline under sections 490 and 4301,  
5 subdivision (I) of the Code in that Respondent was convicted of a crime that is substantially  
6 related to the qualifications, functions, and duties of a licensed pharmacy technician. The  
7 circumstances are as follows:

8 a. On or about November 2, 2011, in a criminal proceeding entitled *The*  
9 *People of the State of California vs. Dennis Quoc Nguyen Ho*, in Orange County Superior Court,  
10 Case Number 11WF1487, Respondent was convicted on his plea of guilty to violating Health and  
11 Safety (H & S) Code section 11357 subdivision (c), possession of more than 28.5 grams of  
12 Marijuana, a misdemeanor.

13 b. As a result of the conviction, on or about November 2, 2011, Respondent  
14 was sentenced to three years informal probation, and ordered to serve four days in Orange  
15 County Jail with credit for two days actually served and another two days for good conduct, and  
16 complete 16 days of community service with the California Department of Transportation.  
17 Respondent was also ordered to pay \$2,000.00 to the Victim Witness Emergency Fund, \$200.00  
18 in fines, and \$60.00 in fees.

19 c. The facts that led to the conviction are that on or about March 19, 2011, an  
20 Orange County Sheriff's Deputy responded to a disturbance call in the City of Midway,  
21 California. Upon arrival, the Officer saw Respondent exiting the driver's side of a vehicle. As the  
22 Officer walked past the driver's side door that was about to close, he smelled a strong odor of  
23 Marijuana coming from inside the vehicle. The Officer instructed Respondent to stop and asked  
24 why the smell of Marijuana emanated from inside the vehicle. Respondent admitted to  
25 possessing Marijuana on his person and inside the vehicle and consented to a vehicular search.  
26 The search yielded a small plastic container with 0.4 grams of Marijuana inside, a plastic baggie  
27 containing 10.4 grams of Marijuana, a plastic container with approximately 5.7 grams Hash, two  
28 small red plastic containers, and a scale with Marijuana residue on it. Respondent waived his

1 Miranda rights and admitted to selling drugs to friends and acquaintances that do not have any  
2 doctor's recommendation for medical Marijuana. Respondent admitted to possessing more than  
3 28.5 grams of Marijuana.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Violation of Drug Laws)**

6 18. Respondent is subject to disciplinary action under section 4301, subdivision (j) of  
7 the Code in that Respondent violated Code section 4060 and H & S Code section 11357  
8 subdivision (c), statutes of the State of California regulating controlled substances and dangerous  
9 drugs, as detailed in paragraph 17, above.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Conduct That Would Have Warranted Denial of a License)**

12 19. Respondent is subject to disciplinary action under section 4301, subdivision (p) of  
13 the Code in that Respondent was convicted of possession of more than 28.5 grams of Marijuana,  
14 conduct that would have warranted the denial of a pharmacy technician registration under section  
15 480, subdivision (a)(1) of the Code, as detailed in paragraph 17, above.

16 **PRAYER**

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

19 1. Revoking or suspending Pharmacy Technician Registration Number TCH 86377,  
20 issued to Dennis Quoc Nguyen Ho;

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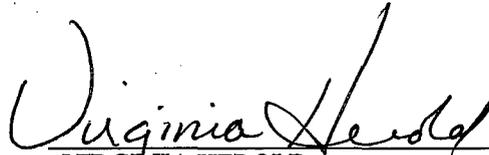
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2. Ordering Dennis Quoc Nguyen Ho to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED:

6/7/12



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

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