KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General
State Bar No. 101336
AMANDA DODDS
Senior Legal Analyst
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2141
Facsimile: (619) 645-2061
*Attorneys for Complainant*

**BEFORE THE**
**BOARD OF PHARMACY**
**DEPARTMENT OF CONSUMER AFFAIRS**
**STATE OF CALIFORNIA**

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>**JOHN HUY TONG**<br>**8105 18th Street**<br>**Westminster, CA 92683**<br><br>**Pharmacy Technician Registration**<br>**No. TCH 82932**<br><br>Respondent. | Case No. 4583<br><br>**A C C U S A T I O N** |

Complainant alleges:

**PARTIES**

1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about July 22, 2008, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 82932 to John Huy Tong (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2014, unless renewed.

///

## JURISDICTION

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 (Code) unless otherwise indicated.

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

5. Section 4300.1 of the Code states:

> The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

## STATUTORY PROVISIONS

6. Section 482 of the Code states:

> Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:
>
> (a) Considering the denial of a license by the board under Section 480; or
>
> (b) Considering suspension or revocation of a license under Section 490.
>
> Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. 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.

8. 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."

9. 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:

. . . .

(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.

. . . .

(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

10. 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.

11. 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.

**COSTS**

12. Section 125.3 of the Code provides, 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

**FIRST CAUSE FOR DISCIPLINE**

**(August 18, 2008 Criminal Conviction for Aggravated Assault on August 10, 2008)**

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

a. On or about August 18, 2008, in a criminal proceeding entitled *People of the State of California v. John Huy Tong,* in Orange County Superior Court, case number 08WF1638, Respondent was convicted on his plea of guilty to violating Penal Code section 245, subdivision (a)(1), aggravated assault, reduced from a felony to a misdemeanor at the request of the *People.*

b. As a result of the conviction, on or about August 18, 2008, Respondent was granted three years informal probation, and ordered to serve 12 days in the Orange County Jail, with credit for 12 days. Respondent was prohibited from owning or possessing any type of dangerous or deadly weapon. Respondent was further ordered to pay fines and fees, and comply with probation terms. On or about September 29, 2011, the court granted Respondent's petition for dismissal. Respondent's plea of guilty was withdrawn, a plea of not guilty was entered, and the matter was dismissed pursuant to Penal Code section 1203.4.

c. The facts that led to the conviction are that on or about the evening of August 10, 2008, officers with the Westminster Police Department responded to a "subject with a knife" call at a residence Respondent shared with other individuals. Upon arrival, the officers encountered Respondent's brother, who refused to cooperate, was combative, and had to be forcibly restrained. In an interview with Respondent, he told the officers that when he got home from work, he noticed that the door to his bedroom was open and several bottles of alcohol were missing. Respondent confronted his brother in the kitchen; a fist fight ensued and Respondent grabbed a knife from the kitchen drawer to defend himself. Witnesses in the household stated they observed Respondent hold the knife to his brother's neck. A male in the household attempted to break up the fight and was cut on his finger in the process. Respondent was arrested for assault.

## SECOND CAUSE FOR DISCIPLINE

**(November 1, 2012 Criminal Conviction for DUI on May 17, 2012)**

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

a. On or about November 1, 2012, in a criminal proceeding entitled *People of the State of California v. John Huy Tong, aka John Huy Doan,* in Orange County Superior Court, case number 12WM05497, Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152, subdivision (a), driving under the influence (Count 1), and Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 or more

(Count 2), misdemeanors. Respondent admitted, and the court found true the special allegation that Respondent's BAC was .20 percent or more, pursuant to Vehicle Code section 23538, subdivision (b)(2). The court certified Respondent's BAC as .22 percent.

b. As a result of the convictions, on or about November 1, 2012, the court stayed sentence on Count 2. As to Count 1, Respondent was granted three years informal probation, and ordered to complete a nine-moth Level 2 First Offender Alcohol Program and a MADD Victim Impact Panel session. Respondent was further ordered to pay fees, fines and restitution, and comply with standard DUI probation terms.

c. The facts that led to the convictions are that on or about the evening of May 17, 2012, a patrol officer with the Huntington Beach Police Department was dispatched to investigate a citizen's report of a possible drunk driver. Upon arrival at the scene, the officer was flagged down by the witness and directed to a vehicle driven by Respondent. After making a traffic stop, the officer observed that Respondent had the objective symptoms of impairment: slow, slurred speech, bloodshot and watery eyes, and an overwhelming odor of an alcoholic beverage emitting from Respondent's person and breath. The officer had Respondent exit his vehicle; Respondent walked with an unsteady gait. Respondent performed poorly on a series of field sobriety tests and he was arrested for driving under the influence of alcohol. During booking, Respondent provided a sample of blood.

## THIRD CAUSE FOR DISCIPLINE

### (Dangerous Use of Alcohol)

15. Respondent has subjected his registration to disciplinary action under section 4301, subdivision (h) of the Code for unprofessional conduct in that on or about May 17, 2012, Respondent operated a motor vehicle while substantially impaired by alcoholic beverages, as detailed in paragraph 14, above.

## DISCIPLINARY CONSIDERATIONS

16. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant to California Code of Regulations, title 16, section 1769, Complainant alleges that on or about August 30, 2006, in a criminal proceeding entitled *People of the State of California v. John Huy*

*Tong,* in Los Angeles County Superior Court, case number D280043, Respondent was convicted on his plea of nolo contendere to violating Penal Code section 647, subdivision (f), public intoxication. Respondent was sentenced to two days in the county jail, with credit for two days, and granted one year summary probation, ordered to pay fees and fines, and to comply with probation terms.

**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 82932, issued to John Huy Tong;

2. Ordering John Huy Tong 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: 7/22/13

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

SD2013705042