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*Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:  
12  
13 **YEN K. BUI**  
14 **9689 Carnation Avenue**  
**Fountain Valley, CA 92708**  
15  
16 **Pharmacy Technician License No. 55428**  
Respondent.

Case No. 4813

**FIRST AMENDED ACCUSATION**

17  
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about March 8, 2004, the Board of Pharmacy issued Pharmacy Technician  
24 License Number 55428 to Yen K. Bui (Respondent). The Pharmacy Technician License was  
25 in full force and effect at all times relevant to the charges brought herein and expired on  
26 September 30, 2013.

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1 **JURISDICTION**

2 3. This First Amended Accusation is brought before the Board of Pharmacy (Board),  
3 Department of Consumer Affairs, under the authority of the following laws. All section  
4 references are to the Business and Professions Code unless otherwise indicated.

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

7 5. Section 4300.1 of the Code states:

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

11 **STATUTORY PROVISIONS**

12 6. Section 482 of the Code states:

13 Each board under the provisions of this code shall develop criteria to  
14 evaluate the rehabilitation of a person when:

15 (a) Considering the denial of a license by the board under Section 480; or

16 (b) Considering suspension or revocation of a license under Section 490.

17 Each board shall take into account all competent evidence of  
18 rehabilitation furnished by the applicant or licensee.

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

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted  
25 by a board within the department pursuant to law to deny an application for a license  
26 or to suspend or revoke a license or otherwise take disciplinary action against a  
27 person who holds a license, upon the ground that the applicant or the licensee has  
28 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

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1 the board may inquire into the circumstances surrounding the commission of the  
2 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.

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

5 9. Section 4301 of the Code states:

6 The board shall take action against any holder of a license who is guilty  
7 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:

8 . . . .

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

11 . . . .

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

. . . .

(o) Violating or attempting to violate, directly or indirectly, or assisting in  
or abetting the violation of or conspiring to violate any provision or term of this  
chapter or of the applicable federal and state laws and regulations governing  
pharmacy, including regulations established by the board or by any other state or  
federal regulatory agency.

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1 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
2 licensee or registrant to perform the functions authorized by his license or registration in a manner  
3 consistent with the public health, safety, or welfare."

#### 4 **COST RECOVERY**

5 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
6 administrative law judge to direct a licentiate found to have committed a violation or violations of  
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
8 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
9 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
10 included in a stipulated settlement.

#### 11 **DRUGS**

12 15. Ketamine Is a Schedule III controlled substance pursuant to Health and Safety Code  
13 section 11056, subdivision (g), and a dangerous drug pursuant to Business and Professions Code section  
14 4022.

15 16. Methylenedioxy amphetamine, commonly known as Ecstasy (MDMA), is a  
16 Schedule I controlled substance as designated by Health and Safety Code section 11554(d)(6) and  
17 is a dangerous drug pursuant to Business and Professions Code section 4022.

#### 18 **FIRST FOR DISCIPLINE**

#### 19 **(May 30, 2013 Criminal Conviction for Sale or Transportation of a 20 Controlled Substance – Ecstasy – on October 11, 2012)**

21 17. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision  
22 (l) of the Code in that she was convicted of a crime that is substantially related to the  
23 qualifications, functions and duties of a pharmacy technician. The circumstances are as follows:

24 18. On or about May 30, 2013, in a criminal proceeding entitled *The People of the State*  
25 *of California v. Yen Kim Bui, aka Yen Thi Kim Bui*, in the Superior Court of California, County of  
26 Orange, West Justice Center, Case No. 12WF3025, Respondent was convicted on her plea of  
27 guilty of violating Health and Safety Code section 11379(a) (sale or transportation of a controlled  
28

1 substance – ecstasy (MDMA)), a felony. Pursuant to a plea bargain, counts for violating Health  
2 and Safety Code sections 11378 (possession for sale of ecstasy (MDMA)), and 11379.2  
3 (possession for sale of ketamine), felonies, were dismissed.

4 19. As a result of the conviction, the Court placed Respondent on three years formal  
5 probation, ordered her to serve 365 days in the Orange County Jail, and stayed the jail sentence  
6 pending successful completion of probation. The Court also ordered Respondent to obey all laws,  
7 pay various fines and fees, provide a DNA sample and prints for the State DNA Database,  
8 register pursuant to Health and Safety Code section 11590, complete 45 days Cal Trans service as  
9 directed by the Probation Department, submit person and property to search and seizure,  
10 cooperate with probation or any mandatory supervision officer in any plan for psychological,  
11 psychiatric, alcohol and/or drug treatment probation, not own, use or possess any type of  
12 dangerous or deadly weapon, disclose terms and conditions of probation when asked by any law  
13 enforcement or probation officer, and pay costs of supervision.

14 20. The circumstances that led to the conviction are that on October 11, 2012,  
15 Westminster Police Department Officers served a search warrant issued by an Orange County  
16 Superior Court judge commanding the search of Respondent's vehicle, a maroon Scion XB, and  
17 her place of residence in Stanton, California. At approximately 1051 hours, officers conducted a  
18 traffic stop of Respondent's vehicle in the area of Beach and Chapman in Westminster,  
19 California. Respondent was the passenger in the vehicle that was being driven by a male.  
20 Officers conducted a search of the vehicle and Respondent's person and property pursuant to the  
21 warrant and located the controlled substance ecstasy (MDMA) in various forms, including pills,  
22 capsules and white powder. Respondent and her companion were arrested and transported to the  
23 Westminster Police Department for processing.

24 21. Officers then proceeded to Respondent's residence located on Santa Barbara Avenue  
25 in Stanton, California, to conduct a search. Officers used keys obtained from the vehicle to gain  
26 entry into the residence, where officers found more contraband including pills packaged in 17  
27 separate baggies, consistent with packaging for selling the suspected ecstasy, 33 vials of  
28 Ketamine 10 ml. each, more ecstasy pills contained in a clear glass bakeware type pan, and

1 various drug paraphernalia, including a package of 1000 empty clear gel capsules, and \$2,720 in  
2 cash.

3 22. Officers conducted an interview of Respondent prior to booking and Respondent  
4 admitted to officers that she sold drugs in large quantities "at the club."

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Violation of California Statutes Regulating Controlled Substances)**

7 23. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and  
8 (o) of the Code for unprofessional conduct in that on or about October 11, 2012, Respondent  
9 violated Health and Safety Code section 11379(a) and Business and Professions Code section  
10 4060, as detailed at paragraphs 17-22, above, which are incorporated here by reference.

11 **PRAYER**

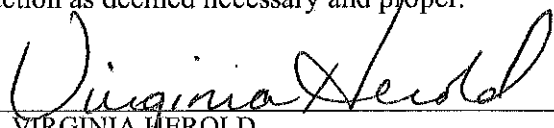
12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
13 and that following the hearing, the Board of Pharmacy issue a decision:

14 1. Revoking or suspending Pharmacy Technician License Number 55428, issued to  
15 Yen K. Bui

16 2. Ordering Yen K. Bui to pay the Board of Pharmacy the reasonable costs of the  
17 investigation and enforcement of this case, pursuant to Business and Professions Code section  
18 125.3;

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

20 DATED: 3/13/14



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

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

11 In the Matter of the Accusation Against:

Case No. 4813

12 **YEN K. BUI**  
13 **9689 Carnation Avenue**  
14 **Fountain Valley, CA 92708**

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

15 **Pharmacy Technician License No. 55428**

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 March 8, 2004, the Board of Pharmacy issued Pharmacy Technician  
23 License Number 55428 to Yen K. Bui (Respondent). The Pharmacy Technician License was  
24 in full force and effect at all times relevant to the charges brought herein and expired on  
25 September 30, 2013.

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1 **JURISDICTION**

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3 Consumer Affairs, under the authority of the following laws. All section references are to the  
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6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued  
9 license by operation of law or by order or decision of the board or a court of law, the  
10 placement of a license on a retired status, or the voluntary surrender of a license by a  
11 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.

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states:

14 Each board under the provisions of this code shall develop criteria to  
15 evaluate the rehabilitation of a person when:

16 (a) Considering the denial of a license by the board under Section 480; or

17 (b) Considering suspension or revocation of a license under Section 490.

18 Each board shall take into account all competent evidence of  
19 rehabilitation furnished by the applicant or licensee.

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

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted  
25 by a board within the department pursuant to law to deny an application for a license  
26 or to suspend or revoke a license or otherwise take disciplinary action against a  
27 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

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1 the board may inquire into the circumstances surrounding the commission of the  
2 crime in order to fix the degree of discipline or to determine if the conviction is  
3 substantially related to the qualifications, functions, and duties of the licensee in  
4 question.

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

7 9. Section 4301 of the Code states:

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

12 . . . .

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

15 . . . .

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

. . . .

(o) Violating or attempting to violate, directly or indirectly, or assisting in  
or abetting the violation of or conspiring to violate any provision or term of this  
chapter or of the applicable federal and state laws and regulations governing  
pharmacy, including regulations established by the board or by any other state or  
federal regulatory agency.

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10. Section 4022 of the Code states

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

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

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

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

11. Section 4060 of the Code provides in pertinent part, that 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.

**REGULATORY PROVISIONS**

12. 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.

13. 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

1 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
2 licensee or registrant to perform the functions authorized by his license or registration in a manner  
3 consistent with the public health, safety, or welfare."

4 **COST RECOVERY**

5 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
6 administrative law judge to direct a licentiate found to have committed a violation or violations of  
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
8 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
9 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
10 included in a stipulated settlement.

11 **DRUGS**

12 15. Methylenedioxy amphetamine, commonly known as Ecstasy (MDMA), is a  
13 Schedule I controlled substance as designated by Health and Safety Code section 11554(d)(6) and  
14 is a dangerous drug pursuant to Business and Professions Code section 4022.

15 **FIRST FOR DISCIPLINE**

16 **(Unprofessional Conduct - Illegal Possession of Controlled Substances -**  
17 **Ecstasy - on January 31, 2013)**

18 16. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision  
19 (l) of the Code in that she was convicted of a crime that is substantially related to the  
20 qualifications, functions and duties of a pharmacy technician. The circumstances are as follows:

21 17. On or about May 30, 2013, in a criminal proceeding entitled *The People of the State*  
22 *of California v. Brandon Abille Fulinara*, in the Superior Court of California, County of Orange,  
23 North Justice Center, Case No. 13NF0710, Respondent was convicted on his plea of guilty of  
24 violating Health and Safety Code section 11377(a) (possession of controlled substances – ecstasy  
25 (MDMA)), a felony. Pursuant to a plea bargain, counts for violating Health and Safety Code  
26 sections 11378 (possession for sale of ecstasy (MDMA)), and 11379(a) (possession for sale of  
27 ecstasy (MDMA)), felonies, were dismissed.  
28

1           18. As a result of the conviction, the Court placed Respondent on three years formal  
2 probation, ordered her to serve 365 days in the Orange County Jail, and stayed the jail sentence  
3 pending successful completion of probation. The Court also ordered Respondent to obey all laws,  
4 pay various fines and fees, provide a DNA sample and prints for the State DNA Database,  
5 register pursuant to Health and Safety Code section 11590, complete 45 days Cal Trans service as  
6 directed by the Probation Department, submit person and property to search and seizure,  
7 cooperate with probation or any mandatory supervision officer in any plan for psychological,  
8 psychiatric, alcohol and/or drug treatment probation, not own, use or possess any type of  
9 dangerous or deadly weapon, disclose terms and conditions of probation when asked by any law  
10 enforcement or probation officer, and pay costs of supervision.

11           19. The circumstances that led to the conviction are that on October 11, 2012,  
12 Westminster Police Department Officers served a search warrant issued by an Orange County  
13 Superior Court judge commanding the search of Respondent's vehicle, a maroon Scion XB, and  
14 her place of residence in Stanton, California. At approximately 1051 hours, officers conducted a  
15 traffic stop of Respondent's vehicle in the area of Beach and Chapman in Westminster,  
16 California. Respondent was the passenger in the vehicle that was being driven by a male.  
17 Officers conducted a search of the vehicle and Respondent's person and property pursuant to the  
18 warrant and located the controlled substance ecstasy (MDMA) in various forms, including pills,  
19 capsules and white powder. Respondent and her companion were arrested and transported to the  
20 Westminster Police Department for processing.

21           20. Officers then proceeded to Respondent's residence located on Santa Barbara Avenue  
22 in Stanton, California, to conduct a search. Officers used keys obtained from the vehicle to gain  
23 entry into the residence, where officers found more contraband including pills packaged in 17  
24 separate baggies, consistent with packaging for selling the suspected ecstasy, 33 vials of  
25 Ketamine 10 ml. each, more ecstasy pills contained in a clear glass bakeware type pan, and  
26 various drug paraphernalia, including a package of 1000 empty clear gel capsules, and \$2,720 in  
27 cash.

28       ///

