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	BEFORE THE		
8	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS		
9	STATE OF CA	ALIFORNIA	
10	In the Matter of the Accusation Against:	Case No. 5255	
12	DUC THUONG VU 568 Altino Blvd.		
13	San Jose, CA 95136	ACCUSATION	
14	Pharmacy Technician License No. TCH 72742		
15	Respondent.		
16	Complainant alleges:		
17	<u>PARTIES</u>		
18	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity		
19	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.		
20	2. On or about October 26, 2006, the Board of Pharmacy issued Pharmacy Technician		
21	License No. TCH 72742 to Duc Thuong Vu (Respondent). The License was in effect at all times		
22	relevant to the charges brought herein and will expire on January 31, 2016, unless renewed.		
23			
24	JURISDI	CTION	
25	3. This Accusation is brought before the Board of Pharmacy (Board), Department of		
26	Consumer Affairs, under the authority of the following laws. All section references are to the		
27	Business and Professions Code (Code) unless otherwise indicated.		
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- 4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].
- 5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.
- 6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or suspension of a Board-issued license, 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 AND REGULATORY PROVISIONS

- 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be limited to, any of the following:
- (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.
- (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.
- (I) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.
- 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of the license.

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9. 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 her license or registration in a manner consistent with the public health, safety, or welfare."

10. 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 of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

- 11. Respondent is subject to discipline under section 4301(l) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about December 6, 2012, in the criminal case *People v. Duc Thuong Vu*, Case No. C1236999 in Santa Clara County Superior Court, Respondent was convicted of violating Penal Code section 484-487(b)(3) (Grand Theft by Employee, Agent, or Servant), a misdemeanor. The conviction was entered as follows:
- a. On or about July 5, 2012, San Jose Police responded to a report by Home Depot on Story Road in San Jose that Respondent, then an employee of the store, had been engaged in a scheme with one or more other individuals whereby Respondent would scan merchandise, then void the sale, and then permit the co-conspirator to leave the store without paying for the item(s). Home Depot staff told police that Respondent scanned and voided \$3,063.42 of merchandise, and that some of the stolen items were subsequently returned without a receipt for store credit. Home Depot staff also told police that the co-conspirator also purchased items using a Home Depot credit card belonging to Respondent. All the transactions were captured on video surveillance. Respondent was arrested on suspicion of violating Penal Code section 503 (Embezzlement).

b. On or about July 17, 2012, in People v. Duc Thuong Vu, Case No. C1236999 in Santa Clara County Superior Court, Respondent was charged with violating Penal Code section 484-487(b)(3) (Grand Theft by Employee, Agent, or Servant), a felony. On or about December 6, 2012, the charge was reduced from a felony to a misdemeanor pursuant to Penal Code section 17. Respondent pleaded nolo contendere and stipulated to a factual basis, and he was convicted of the single misdemeanor count. Imposition of sentence was suspended and Respondent was placed on court probation for two (2) years, on terms and conditions including 20 days in jail (4 days credit), restitution of \$3,062.42 to Home Depot, and payment of fines and fees.

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SECOND CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

12. Respondent is subject to discipline under section 4301(f) of the Code, in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, including the acts described in paragraph 11, and on his 2014 license renewal form, in response to a question asking whether, since his last renewal (in or about January 2012), Respondent had been convicted of a crime, Respondent checked the box for "No," despite the foregoing.

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THIRD CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

- 13. Respondent is subject to discipline under section 4301(1) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about March 3, 2014, in the criminal case *People v*. Duc Thuong Vu, Case No. C1476716 in Santa Clara County Superior Court, Respondent was convicted of violating Vehicle Code section(s) 23103(a)/23103.5 (Reckless Driving with Alcohol Involved ["Wet Reckless"]), a misdemeanor. The conviction was entered as follows:
- On or about January 17, 2014, Respondent was pulled over by the California a. Highway Patrol. Based on objective signs of intoxication and his performance on Field Sobriety Tests (FSTs), Respondent was placed under arrest for driving under the influence.

1	b. On or about February 21, 2014, in <i>People v. Duc Thuong Vu</i> , Case No.	
2	C1476716 in Santa Clara County Superior Court, Respondent was, charged with violating (1)	
3	Vehicle Code section 23152, subdivision (a) (Driving Under the Influence of Alcohol), a	
4	misdemeanor, and (2) Vehicle Code section 23152, subdivision (b) (Driving With Blood Alcohol	
5	Level of 0.08% or Higher), a misdemeanor, with special allegations under each count of a prior	
6	conviction for violating Vehicle Code section 23152, in Santa Clara County Case No. C107072	
7	On or about March 3, 2014, a charge of violating Vehicle Code section(s) 23103(a)/23103.5	
8	(Reckless Driving with Alcohol Involved ["Wet Reckless"]), a misdemeanor, was substituted fo	
9	count 1. Respondent pleaded nolo contendere to the substituted count 1, stipulated to the factual	
10	basis and the finding that the conduct involved alcohol, and was convicted of the single	
11	misdemeanor count. Count 2 was dismissed. Imposition of sentence was suspended and	
12	Respondent was placed on court probation for two (2) years, on terms and conditions including	
13	12-hour First Offender Program, and payment of fines and fees.	
14		
15	FOURTH CAUSE FOR DISCIPLINE	
16	(Dangerous or Injurious Use of Alcohol)	
17	14. Respondent is subject to discipline under section 4301(h) of the Code, in that, as	
18	described in paragraph 13 above, Respondent used alcohol in a dangerous or injurious manner.	
19		
20	FIFTH CAUSE FOR DISCIPLINE	
21	(Unprofessional Conduct)	
22	15. Respondent is subject to discipline under section 4301 of the Code in that, as	
23	described in paragraphs 11-14 above, Respondent engaged in unprofessional conduct.	
24	///	
25	///	
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DISCIPLINE CONSIDERATIONS 1 2 16. To determine the appropriate level of discipline, if any, to be imposed on Respondent, Complainant further alleges the following: 3 On or about January 30, 2002, in Case No. CC133853 in Santa Clara County 4 5 Superior Court, Respondent was convicted of violating Vehicle Code section 23152, subdivision (a) (Driving Under the Influence of Alcohol/Drugs), a misdemeanor. 6 On or about June 10, 2010, in Case No. C1070721 in Santa Clara County b. 7 Superior Court, Respondent was convicted of violating Vehicle Code section 23152, subdivision 8 (b) (Driving With a Blood Alcohol Level of 0.08% or Higher), a misdemeanor, and admitted to a 9 special allegation that he had a prior conviction in Case No. CC133853, above. 10 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 TCH 72742, issued to 15 Duc Thuong Vu (Respondent); 16 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and 17 enforcement of this case, pursuant to Business and Professions Code section 125.3: 18 3. 19 Taking such other and further action as is deemed necessary and proper. 20 21 Executive Officer 22 Board of Pharmacy Department of Consumer Affairs 23 State of California Complainant 24 25 SF2014409391

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