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

12 In the Matter of the Accusation Against:

Case No. 5259

13 **TINA THY PHAN**
809 W. Cesar E. Chavez Blvd.
Los Angeles, CA 90012

A C C U S A T I O N

14 Pharmacist License No. RPH 67225

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about July 16, 2012, the Board issued Pharmacist License No. RPH 67225 to
22 Tina Thy Phan (Respondent). The Pharmacist License was in full force and effect at all times
23 relevant to the charges brought herein and will expire on September 30, 2015, unless renewed.

24 **JURISDICTION**

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

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1 (l) The conviction of a crime substantially related to the qualifications,
2 functions, and duties of a licensee under this chapter. The record of conviction of a
3 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
4 States Code regulating controlled substances or of a violation of the statutes of this
5 state regulating controlled substances or dangerous drugs shall be conclusive evidence
6 of unprofessional conduct. In all other cases, the record of conviction shall be
7 conclusive evidence only of the fact that the conviction occurred. The board may
8 inquire into the circumstances surrounding the commission of the crime, in order to fix
9 the degree of discipline or, in the case of a conviction not involving controlled
10 substances or dangerous drugs, to determine if the conviction is of an offense
11 substantially related to the qualifications, functions, and duties of a licensee under this
12 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
13 contendere is deemed to be a conviction within the meaning of this provision. The
14 board may take action when the time for appeal has elapsed, or the judgment of
15 conviction has been affirmed on appeal or when an order granting probation is made
16 suspending the imposition of sentence, irrespective of a subsequent order under
17 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
18 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
19 dismissing the accusation, information, or indictment. . . .

20 8. Section 4402, subdivision (a) provides that any pharmacist license that is not renewed
21 within three years following its expiration may not be renewed, restored, or reinstated and shall be
22 canceled by operation of law at the end of the three-year period. Under Section 4402, subdivision
23 (d), the Board has authority to proceed with an accusation that has been filed prior to the
24 expiration of the three-year period.

25 REGULATORY PROVISION

26 9. California Code of Regulations, title 16, section 1770, states:

27 For the purpose of denial, suspension, or revocation of a personal or
28 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.

29 COST RECOVERY

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

33 CONTROLLED SUBSTANCE / DANGEROUS DRUG

34 11. Codeine is a Schedule II controlled substance as defined in Health and Safety Code
35 section 11055 (b)(1)(G); and categorized as a dangerous drug pursuant to section 4022.

FIRST CAUSE FOR DISCIPLINE

(Convictions of Substantially Related Crimes)

12. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of crimes substantially related to the qualifications, functions or duties of a licensee which to a substantial degree evidence her present or potential unfitness to perform the functions authorized by her license in a manner consistent with the public health, safety, or welfare, as follows:

a. On or about April 30, 2014, after pleading nolo contendere and admitting to sustaining two prior similar convictions, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152(b) [drive with an equal to or greater than 0.08% blood alcohol content (BAC)] in the criminal proceeding entitled *The People of the State of California v. Tina Thy Phan* (Super. Ct. Monterey County, 2014, No. MS319494A). The Court sentenced Respondent to 120 days jail, placed her on five years probation, ordered her to complete a Second-Offender Alcohol Program, and designated her as a Habitual Traffic Offender, for three years.

b. The circumstances underlying the conviction are that on or about March 4, 2014, after drinking two beers, Respondent drove her vehicle the wrong way on a one-way street, towards a police officer's vehicle. Respondent's BAC tested .15% /.15%. Respondent had a passenger in her vehicle. Respondent admitted that she drank two beers before driving her vehicle.

c. On or about July 18, 2007, after pleading nolo contendere and acknowledging the use of alcohol, Respondent was convicted of one interlineated misdemeanor count of violating Vehicle Code section 23103 [wet: reckless], per Vehicle Code section 23103.5, in the criminal proceeding entitled *The People of the State of California v. Tina Thy Phan* (Super. Ct. L.A. County, 2007, No. 7WA01186). The Court placed Respondent on 24 months probation, and ordered her to complete 12 Alcoholics Anonymous meetings.

d. The circumstances underlying the conviction are that on or about April 9, 2007, after taking prescribed Codeine, Respondent also drank one beer and within 30 minutes drove a vehicle. Respondent drove a vehicle while under the influence of alcohol at an unsafe speed, while

1 straddling highway lanes. Respondent's BAC tested .15%/ .16%.

2 e. On or about September 27, 2004, after pleading nolo contendere and acknowledging
3 the use of alcohol, Respondent was convicted of one amended misdemeanor count of violating
4 Vehicle Code section 23103 [wet; reckless] in the criminal proceeding entitled *The People of the*
5 *State of California v. Tina Thy Phan* (Super. Ct. L.A. County, 2004, No. 4SM03484). The Court
6 placed Respondent on 24 months probation and ordered her to complete a 12-Hour Alcohol
7 Program.

8 f. The circumstances underlying the conviction are that on or about July 2, 2004, while
9 under the influence of alcohol, Respondent drove a vehicle erratically and was observed driving the
10 vehicle into opposing traffic by crossing over double yellow lines. Respondent had a passenger in
11 her vehicle at the time. Respondent failed the field sobriety tests.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Dangerous Use of Alcohol)**

14 13. Respondent is subject to disciplinary action under section 4301, subdivision (h), on the
15 grounds of unprofessional conduct, in that Respondent used alcoholic beverages to the extent or in
16 a manner as to be dangerous or injurious to herself or others. Complainant refers to and by this
17 reference incorporates the allegations set forth above in paragraph 12, subparagraphs a through f,
18 inclusive, as though set forth fully.

19 **PRAYER**

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

22 1. Revoking or suspending Pharmacist License No. RPH 67225, issued to Tina Thy
23 Phan;

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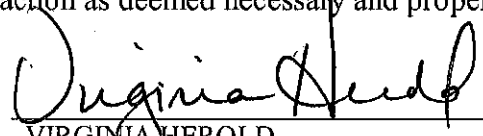
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2. Ordering Tina Thy Phan to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and

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

DATED: 3/31/15



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

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