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

In the Matter of the Accusation Against: **DON TUONG DANG** **258 Manzanita Drive** **Oceanside, CA 92057** **Pharmacy Technician Registration** **No. TCH 110497** Respondent.	Case No. 5268 **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 March 18, 2011, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 110497 to Don Tuong Dang (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein, expired on September 30, 2014, and has not been renewed.

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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 unless otherwise indicated.

4. Section 4300(a) of the Code states that "[e]very license issued may be suspended or revoked."

5. Section 4300.1 of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY AND REGULATORY 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:
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> . . . .
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> (a) Considering the denial of a license by the board under Section 480; or
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> (b) Considering suspension or revocation of a license under Section 490.
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> 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.

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8. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

9. 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."

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.

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

11. 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:

. . . .

(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.

. . . .

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

. . . .

(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.

. . . .

(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

. . . .

12. Title 16, California Code of Regulations, 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. Title 16, California Code of Regulations, 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.

14. Health and Safety Code section 11173 states in pertinent part that no person shall obtain a controlled substance by fraud, deceit, subterfuge or concealment of a material fact.

COST RECOVERY

15. 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

(March 28, 2013 Criminal Conviction for Grand Theft by Employee Between June of 2013 and January of 2014)

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

17. On or about March 28, 2013, in a criminal proceeding entitled *People of the State of California vs. Don Dang*, in the Superior Court of California, County of San Diego, North County Division, in case number SCN315276, Respondent was convicted, on his plea of guilty, of violating Penal Code section 487(a) (grand theft over $950), a lesser included offense of Penal Code section 487(b)(3) (grand theft by employee), a felony. As a result of a plea bargain, counts for violating Penal Code sections 508 (fraudulent misappropriation by employee), 484 (petty theft), and Business and Professions Code section 4060 (possession of controlled substances without a prescription), were dismissed.

18. As a result of the conviction, the Court placed Respondent on three years formal probation, ordered him to serve four days in the county jail, perform 20 days of community service at the rate of one day per week, obey all laws, not possess any firearm, provide DNA samples, provide true name and date of birth if contacted by law enforcement, submit to search and seizure, participate in treatment, therapy and/or counseling, attend and successfully complete a substance abuse cognitive therapy program as directed by probation officer, attend self-help meetings, complete a residential treatment program as directed by probation officer, not use or possess alcohol, not use or possess controlled substances without a valid prescription, pay various fines and fees, pay restitution to Target Corporation in the amount of $3,500, obtain employment approval from probation officer, and not work in the capacity of a pharmacy technician.

19. The circumstances that led to the conviction are that on or about January 16, 2013, C.C., with Target Healthcare Corporation Security, through their normal store analysis process, identified a possible loss of 6,100 hydrocodone/apap (HPAP) at Target T-303. The Lead Loss

Prevention Investigator (A.G.) and the Pharmacy Business Manager (H.W.) were notified and an investigation was initiated.

20. On January 29, 2013, A.G. was watching real time video when he observed Respondent, who was a pharmacy technician employed by Target, concealing Tramadol and then leaving the pharmacy with the Tramadol. When Respondent left the pharmacy, he was pulled aside and questioned by A.G. Respondent produced 15 Tramadol from his pocket and admitted to stealing about 30 HPAP tablets daily. Respondent told A.G. that he was "horribly" addicted to HPAP and that he was consuming approximately 30 tablets of HPAP daily. Respondent further told A.G. that he was trying to decrease his addiction and was attempting to move from HPAP to Tramadol, and that on this particular day he stole 15 Tramadol. Respondent admitted to stealing an average of 30 tablets daily starting in June of 2012, and told A.G. that no one else in the pharmacy assisted him with this. Respondent further told A.G. that he did not sell any of the tables, but consumed them himself. On January 29, 2013, Respondent wrote an Admission Statement and left the document in possession of Target T-303. Target staff notified Oceanside Police Department of the thefts and Respondent was arrested on the same day.

21. Respondent admitted to Oceanside Police Department Officers that he stole over 6,000 HPAP pills and some tramadol pills between June of 2012 and January 29, 2013. Respondent also admitted to Officers that he personally consumed up to 30 tablets of HPAP daily due to his addiction.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Possession of a Controlled Substance Without a Prescription)

22. Respondent is subject to disciplinary action under section 4301(o) in that between or about June of 2013 and January of 2014, Respondent possessed controlled substances without a prescription in violation of section 4060, when he stole the controlled substances hydrocodone/acetaminophen and tramadol from the pharmacy that employed him, as is more fully detailed at paragraphs 16-21, above, which are incorporated here by reference.

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THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Obtaining a Controlled Substance by Fraud, Deceit or Subterfuge)

23. Respondent is subject to disciplinary action under section 4301(j) for obtaining controlled substances by fraud, deceit, or subterfuge in violation of Health and Safety Code section 11173, when he stole the controlled substances hydrocodone/acetaminophen and tramadol from the pharmacy that employed him, as is more fully detailed at paragraphs 16-21, above, which are incorporated here by reference.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Administering of Controlled Substances in a Manner Dangerous or Injurious to Self or Others)

24. Respondent is subject to disciplinary action under section 4301, subdivision (h), in that between or about June of 2013 and January of 2014, he administered to himself hydrocodone/acetaminophen and tramadol in a manner dangerous or injurious to himself or others, as is more fully detailed at paragraphs 16-21, above, which are incorporated here by reference.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Commission of an Act Involving Dishonesty)

25. Respondent is subject to disciplinary action under section 4301, subdivision (f), in that between or about June of 2013 and January of 2014, he committed acts of dishonesty when he stole the controlled substances hydrocodone/acetaminophen and tramadol from the pharmacy that employed him, as is more fully detailed at paragraphs 16-21, above, which are incorporated here by reference.

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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 110497, issued to Don Tuong Dang;

2. Ordering Don Tuong Dang 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: 1/23/15

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

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