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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. 5418

12 **TONY M. VAN**
13 **9472 Downing Circle**
14 **Westminster, CA 92683**

A C C U S A T I O N

15 **Pharmacy Technician Registration**
No. TCH 77061

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 July 3, 2007, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 77061 to Tony M. Van (Respondent). The Pharmacy Technician
24 Registration expired on January 31, 2015, and has not been renewed.

25 **JURISDICTION**

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

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

3 5. Section 4300.1 of the Code states:

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

8 STATUTORY PROVISIONS

9 6. Section 482 of the Code states:

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

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

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

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

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

20 8. Section 493 of the Code states:

21 Notwithstanding any other provision of law, in a proceeding conducted by a board
22 within the department pursuant to law to deny an application for a license or to suspend
23 or revoke a license or otherwise take disciplinary action against a person who holds a
24 license, upon the ground that the applicant or the licensee has been convicted of a crime
25 substantially related to the qualifications, functions, and duties of the licensee in
26 question, the record of conviction of the crime shall be conclusive evidence of the fact
27 that the conviction occurred, but only of that fact, and the board may inquire into the
28 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."

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1 9. Section 4301 of the Code states:

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

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7 (h) The administering to oneself, of any controlled substance, or the use of any
8 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous
9 or injurious to oneself, to a person holding a license under this chapter, or to any other
10 person or to the public, or to the extent that the use impairs the ability of the person to
11 conduct with safety to the public the practice authorized by the license.

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13 (k) The conviction of more than one misdemeanor or any felony involving the use,
14 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
15 combination of those substances.

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

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

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1 **REGULATORY PROVISIONS**

2 10. California Code of Regulations, title 16, section 1769, states:

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4 (b) When considering the suspension or revocation of a facility or a personal
5 License on the ground that the licensee or the registrant has been convicted of a crime,
6 the board, in evaluating the rehabilitation of such person and his present eligibility for a
7 license will consider the following criteria:

8 (1) Nature and severity of the act(s) or offense(s).

9 (2) Total criminal record.

10 (3) The time that has elapsed since commission of the act(s) or offense(s).

11 (4) Whether the licensee has complied with all terms of parole, probation,
12 restitution or any other sanctions lawfully imposed against the licensee.

13 (5) Evidence, if any, of rehabilitation submitted by the licensee.

14 11. California Code of Regulations, title 16, section 1770, states:

15 For the purpose of denial, suspension, or revocation of a personal or facility license
16 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions
17 Code, a crime or act shall be considered substantially related to the qualifications,
18 functions or duties of a licensee or registrant if to a substantial degree it evidences
19 present or potential unfitness of a licensee or registrant to perform the functions
20 authorized by his license or registration in a manner consistent with the public health,
21 safety, or welfare.

22 12. California Code of Regulations, title 16, section 1775.1(d) states:

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24 Failure of a person or entity cited to pay a fine within 30 days of the date of
25 assessment, unless the citation is being appealed, may result in disciplinary action by the
26 board. When a citation is not contested and a fine is not paid, the full amount of the fine
27 shall be added to the fee for renewal of the license and the license shall not be renewed
28 without payment of the renewal fee and fine.

COSTS

23 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
24 administrative law judge to direct a licentiate found to have committed a violation or violations of
25 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
26 enforcement of the case, with failure of the licentiate to comply subjecting the license to not
27 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
28 may be included in a stipulated settlement.

1 **DRUGS**

2 14. Soma, sold generically as carisoprodol, is a dangerous drug pursuant to Business and
3 Professions Code section 4022.

4 15. Diazepam, sold commercially as Valium, is a Schedule IV controlled substance as
5 designated by Health and Safety Code section 11057(d)(9), and is a dangerous drug pursuant to
6 Business and Professions Code section 4022.

7 16. Suboxone, sold generically as buprenorphine, is a Schedule III controlled substance
8 as designated by Health and Safety Code section 11056(e), and is a dangerous drug pursuant to
9 Business and Professions Code section 4022.

10 17. Clonazepam, sold generically as klonopin, is a Schedule IV controlled substance as
11 designated by Health and Safety Code section 11057(d)(7), and is a dangerous drug pursuant to
12 Business and Professions Code section 4022.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(May 23, 2013 Criminal Conviction for DUI on January 7, 2013)**

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

18 a. On May 23, 2013, in a criminal proceeding entitled *People of the State of*
19 *California v. Tony Tung Minh Van*, in Orange County Superior Court, case number 13WM01414,
20 Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152(a),
21 driving under the influence of alcohol and/or drugs, a misdemeanor. Pursuant to a plea
22 agreement, the court dismissed an additional charge of possession of a controlled substance
23 without a prescription (Bus. & Prof. Code, § 4060).

24 b. As a result of the conviction, Respondent was granted informal probation for
25 three years. He was ordered to complete a three-month First Offender Alcohol Program and a
26 MADD Victim Impact Panel session, perform 10 days of community service, pay fees, fines, and
27 restitution, and comply with the terms of probation, including abstention from the use of drugs
28 and submission to chemical tests upon demand by law enforcement .

1 c. The facts that led to the conviction are that on the evening of January 7, 2013,
2 the Westminster Police Department was dispatched to a collision involving Respondent.
3 Respondent told the responding officer that as he approached an intersection, he was unable to
4 stop in time and rear-ended the vehicle in front of him. The officer observed that Respondent's
5 speech was slurred, and he was unstable on his feet. Respondent denied consuming alcohol.
6 Respondent submitted a breath sample that was negative for alcohol. While searching
7 Respondent, the officer found a "vaporizer" (a smokeless smoking device) containing marijuana
8 residue in Respondent's pants pocket. Respondent admitted taking a muscle relaxant.
9 Respondent was arrested and transported for booking. As Respondent stepped out of the back of
10 the officer's vehicle at the police department, the officer saw several white pills drop to the
11 ground. With assistance from another officer, Respondent was searched again. Inside his jacket,
12 they located a total of 27 pills, which Respondent identified as Soma and diazepam, and that they
13 were legally prescribed to him.

14 SECOND CAUSE FOR DISCIPLINE

15 (March 19, 2015 Criminal Conviction for DUI on December 21, 2013)

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

19 a. On March 13, 2015, in a criminal proceeding entitled *People of the State of*
20 *California v. Tony Tung Minh Van*, in Orange County Superior Court, case number 14WM01238,
21 Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152(a),
22 driving under the influence of alcohol and/or drugs, a misdemeanor. He was also convicted of
23 driving when his privilege was suspended or revoked (Veh. Code, § 14601.2(a)), and driving with
24 a BAC of .01 percent or more while on probation for DUI (Veh. Code, § 23154(a)).

25 b. As a result of the conviction, Respondent was granted summary probation for
26 five years, and ordered to serve 60 days in jail. He was further ordered to complete an 18-month
27 Multiple Offender Alcohol Program, pay fees, fines, and restitution, and comply with the terms of
28 probation.

1 c. The facts that led to the conviction are that at approximately 2:30 in the
2 morning, on December 21, 2013, the Westminster Police Department responded to a report of a
3 vehicle collision. The first officer to arrive saw Respondent standing on a raised cement
4 walkway in front of an office building. Respondent's vehicle had been rammed into the glass
5 front entrance doors of the building. A witness stated that he had been sitting in his vehicle a
6 short distance away when he heard a loud bump and the sound of breaking glass. When he
7 looked up, he saw that Respondent had driven into the front of the building. The witness gave the
8 officer the keys he had taken out the ignition of Respondent's vehicle, and identified Respondent
9 as its sole occupant and driver. A second officer arrived on scene and conducted an interview of
10 Respondent. The officer observed that Respondent's eyes were watery, his speech was slow and
11 slurred, his voice was raspy, his mouth was dry and chapped, and he was "on the nod," street
12 slang for the alternately wakeful and drowsy states induced by opiates. In a search of
13 Respondent, the officer found two empty packets for Suboxone sublingual film strips.
14 Respondent admitted he had consumed Suboxone and Soma that evening, and that he uses the
15 Suboxone to take the edge off his opiate addiction. Respondent submitted to a series of field
16 sobriety tests, which had to be discontinued because Respondent was unable to stand upright
17 without assistance. Respondent submitted a breath sample that was negative for alcohol.
18 Respondent was arrested for driving under the influence of a controlled substance. During
19 booking, he provided a sample of blood that subsequently tested positive for Clonazepam and
20 buprenorphine (Suboxone).

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Dangerous Use of Controlled Substances)**

23 20. Respondent has subjected his registration to discipline under section 4301(h) of the
24 Code for unprofessional conduct in that on January 7, 2013 and December 21, 2013, Respondent
25 administered to himself controlled substances in a manner that was dangerous or injurious to
26 himself, and to the public, when he operated a motor vehicle while significantly impaired and
27 caused two separate collisions, as described in paragraphs 18 and 19, above.

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FOURTH CAUSE FOR DISCIPLINE

(Convictions Involving the Use of Controlled Substances)

21. Respondent has subjected his registration to discipline under section 4301(k) of the Code for unprofessional conduct in that he was convicted of more than one misdemeanor involving the use, consumption, or self administration of dangerous drugs, as described in paragraphs 18 and 19, above.

FIFTH CAUSE FOR DISCIPLINE

(Violation of Regulation Established by the Board)

22. Respondent has subjected his registration to discipline under section 4301(o) of the Code, in that he failed to comply with California Code of Regulations, title 16, section 1775.1(d), which required that he pay a fine within 30 days of the date of assessment. The circumstances are as follows:

23. On September 11, 2013, the Board issued Citation No. CI 2011 52513 to Respondent. The Citation alleged that on September 26, 2011, and January 7, 2013, Respondent was under the influence of prescribed controlled substances, a violations of Business and Professions Code section 4301, subdivisions (o), (j) and (h), and Health and Safety Code section 11550(a). The Citation assessed an administrative fine of \$5,000, which Respondent was required to pay on or before October 11, 2013. Respondent did not appeal the citation, and has not paid the fine.

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 77061, issued to Tony M. Van;

2. Ordering Tony M. Van 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;

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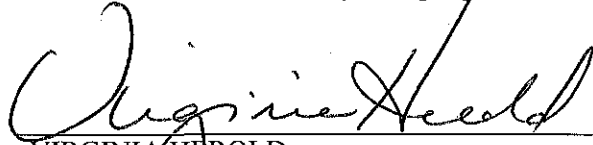
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3. Taking such other and further action as deemed necessary and proper.

DATED: _____

6/13/15



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

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