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

11 In the Matter of the Accusation Against:

Case No. 6064

12 **DENNIS NGUYEN**
13 **14637 Via Bettona**
14 **San Diego, CA 92127**

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
123149

16 Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about April 23, 2012, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 123149 to Dennis Nguyen (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on May 31, 2019, unless 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 (Code) unless otherwise indicated.

4. Section 4300 of the Code states:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

...

5. Section 4300.1 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, 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 PROVISIONS

6. 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 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.

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

11 ...
12
13 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
14 revoke a license on the ground that the licensee has been convicted of a crime substantially
15 related to the qualifications, functions, or duties of the business or profession for which the
16 license was issued.

17 8. Section 493 of the Code states:

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

24 As used in this section, "license" includes "certificate," "permit,"
25 "authority," and "registration."

26 REGULATIONS

27 13. California Code of Regulations, title 16, section 1769 states, in pertinent part:
28

1 (b) When considering the suspension or revocation of a facility or a personal
2 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:

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

4 (2) Total criminal record.

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

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

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

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

10 For the purpose of denial, suspension, or revocation of a personal or
11 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
12 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
13 registrant to perform the functions authorized by his license or registration in a
manner consistent with the public health, safety, or welfare.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(June 2017 Criminal Conviction- Contact of a Minor with Intent to Commit a Sexual**
16 **Offense on December 29, 2016)**

17 9. Respondent's license is subject to discipline under Code section 4301, subdivision (I)
18 in that he was convicted of a crime that is substantially related to the qualifications, functions, and
19 duties of a license pharmacy technician. On June 13, 2017, in a case entitled *People vs. Dennis*
20 *Nguyen* (San Diego Superior Court Case No. 368125), Respondent was convicted by a plea of
21 guilty to a violation of Penal Code section 288.3(a), a felony. Respondent was sentenced to three
22 years formal probation, two days of custody with credit of two days of time served, and ordered
23 to pay \$1,674.00 in fines. In addition, Respondent is required to register as a sex offender
24 pursuant to penal code section 290, work 20 days in Public Service Program, attend a sex
25 offender counseling program and cannot possess or have in his possession any computer and
26 other electronic device with internet access (except pursuant to employment).

27 10. The facts and circumstances surrounding this cause for discipline are as follows: The
28 police, conducting an undercover operation, posed as a 15-year old girl on MeetMe.com.

1 Defendant was arrested after he initiated an online relationship with someone that he believed to
2 be a 15-year-old girl. Defendant posed as a 16-year-old boy and later disclosed that he was a 28-
3 year-old adult male. He engaged in explicit sexual dialogue and arranged to meet the 15-year-old
4 girl for the purpose of a sexual encounter. Respondent offered to provide alcohol to the minor
5 and ultimately arrived at a prearranged meeting location with "Angry Orchard" alcoholic cider in
6 his possession.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Commission of Acts Involving Moral Turpitude, Dishonesty, Fraud or Deceit)**

9 11. Respondent's license is subject to disciplinary action under section 4301, subdivision
10 (f) for committing acts involving moral turpitude. The facts supporting this cause for discipline
11 are described in paragraph 10 above, which is incorporated herein.

12 **PRAYER**

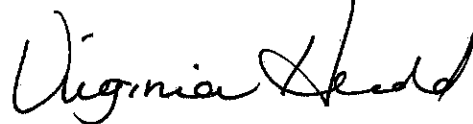
13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Board of Pharmacy issue a decision:

15 1. Revoking or suspending Pharmacy Technician Registration Number TCH 123149,
16 issued to Dennis Nguyen;

17 2. Ordering Dennis Nguyen to pay the Board of Pharmacy the reasonable costs of the
18 investigation and enforcement of this case, pursuant to Business and Professions Code section
19 125.3; and,

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

21
22 DATED: 8/31/17



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

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