1	XAVIER BECERRA Attorney General of California		
2	LINDA K. SCHNEIDER		
3	Senior Assistant Attorney General ANTOINETTE B. CINCOTTA		
4	Supervising Deputy Attorney General State Bar No. 120482		
5	600 West Broadway, Suite 1800 San Diego, CA 92101		
6	P.O. Box 85266 San Diego, CA 92186-5266		
7	Telephone: (619) 738-9457 Facsimile: (619) 645-2061		
8	Attorneys for Complainant		
9		RE THE PHARMACY	
10	DEPARTMENT OF C	CONSUMER AFFAIRS CALIFORNIA	
11			
12	In the Matter of the Accusation Against:	Case No. 6235	
13	TRANSON THEBAO NGUYEN	ACCUSATION	
14	64 Reunion Irvine, CA 92603		
15	Pharmacist License No. RPH 54495		
16	Respondent.		
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18	Complainant alleges:		
19	PAR	TIES	
20	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity		
21	as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.		
22	2. On or about April 15, 2003, the Board issued Pharmacist License Number RPH		
23	54495 to Transon Thebao Nguyen (Respondent).	The Pharmacist License was in full force and	
24	effect at all times relevant to the charges brought	herein and will expire on March 31, 2019,	
25	unless renewed.		
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		(TRANSON THEBAO NGUYEN) ACCUSATION	

1	JURISDICTION	
1	3. This Accusation is brought before the Board under the authority of the following	
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3	laws. All section references are to the Business and Professions Code (Code) unless otherwise	
4	indicated.	
5	4. Section 4300(a) of the Code states "Every license issued may be suspended or	
6	revoked."	
7	5. Section 4300.1 of the Code states:	
8	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.	
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12	STATUTORY PROVISIONS	
13	6. Section 482 of the Code states:	
14	Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:	
15	(a) Considering the denial of a license by the board under Section 480; or	
16	(b) Considering suspension or revocation of a license under Section 490.	
17	Each board shall take into account all competent evidence of rehabilitation	
18	furnished by the applicant or licensee.	
19	7. Section 490 of the Code provides, in pertinent part, that a board may suspend or	
20	revoke a license on the ground that the licensee has been convicted of a crime substantially	
21	related to the qualifications, functions, or duties of the business or profession for which the	
22	license was issued.	
23	8. Section 493 of the Code states:	
24	Notwithstanding any other provision of law, in a proceeding conducted by a board	
25	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	
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	(TRANSON THEBAO NGUYEN) ACCUSATIO	

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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."

9. 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:

(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.

(1) 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...

## **REGULATORY PROVISIONS**

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10. California Code of Regulations, title 16, section 1769, subdivision (b) 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.

1	(3) The time that has elapsed since commission of the act(s) or offense(s).	
2	(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.	
3 4	(5) Evidence, if any, of rehabilitation submitted by the licensee.	
5	11. California Code of Regulations, title 16, section 1770, states:	
6	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	
7	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	
8 9	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.	
10	COSTS	
11	12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the	
12	administrative law judge to direct a licentiate found to have committed a violation or violations of	
13	the licensing act to pay a sum not to exceed the reasonable costs of the investigation and	
14	enforcement of the case, with failure of the licentiate to comply subjecting the license to not	
15	being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs	
16	may be included in a stipulated settlement.	
17	FIRST CAUSE FOR DISCIPLINE	
18	(July 19, 2017 Criminal Convictions for DUI on January 15, 2017)	
19	13. Respondent has subjected his license to discipline under sections 490 and 4301(1) of	
20	the Code in that he was convicted of crimes that are substantially related to the qualifications,	
21	duties, and functions of a pharmacist. The circumstances are as follows:	
22	a. On July 19, 2017, in a criminal proceeding entitled <i>People of the State of</i>	
23	California v. Transon Thebao Nguyen, aka Tran Son The Bao Nguyen, in Orange County	
24	Superior Court, case number 17HM03212, Respondent was convicted on his plea of guilty to	
25	violating Vehicle Code section 23152(a), driving under the influence of alcohol; and Vehicle	
26	Code section 23152(b), driving with a blood alcohol concentration (BAC) of .08 or more, a	
27	misdemeanor. Respondent admitted, and the court found true, the special allegation that	
28	Respondent's BAC was .20 percent or more within the meaning of Vehicle Code section 23578.	
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b. The facts that led to the convictions are that on or about the evening of January 1 15, 2017, the California Highway Patrol (CHP) was dispatched to assist the Irvine Police 2 Department with a traffic collision investigation. Upon arrival, a CHP officer made contact with 3 Respondent, who was standing on the shoulder of the road next to his vehicle. The investigation 4 determined that Respondent collided with the guard rail on the right side of his vehicle causing 5 moderate damage. The CHP officer observed that Respondent displayed the objective symptoms 6 of intoxication including red and watery eyes, slurred speech, an unsteady gait, and a strong odor 7 of alcohol on his breath. Respondent had difficulty maintaining his balance and almost fell over. 8 Respondent denied consuming any alcohol before or after the collision. Respondent submitted to 9 a series of field sobriety tests which he was unable to complete as explained and demonstrated by 10 the CHP officer. Respondent was arrested for driving under the influence of alcohol. During 11 booking, Respondent provided two breath samples that were analyzed with a BAC of .25 and .26, 12 respectively. 13

c. As a result of the conviction, on July 19, 2017, Respondent was granted
informal probation for three years, and ordered to complete a three-month Level 1 First Offender
Alcohol Program and a Victim Impact Counseling session, complete 80 hours of community
service, pay fees and fines, and comply with standard DUI terms.

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## SECOND CAUSE FOR DISCIPLINE

## (Dangerous Use of Alcohol)

14. Respondent has subjected his license to disciplinary action under section 4301(h) of
the Code for unprofessional conduct in that on or about January 15, 2017, as described in
paragraph 13, above, Respondent operated a motor vehicle while significantly impaired by
alcohol, and caused a collision.

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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:

Revoking or suspending Pharmacist License Number RPH 54495, issued to Transon
 Thebao Nguyen;

2. Ordering Transon Thebao Nguyen 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; and, Taking such other and further action as deemed necessary and proper. 3. 10/10/17 DATED: VIRGINIA HEROI D **Executive** Officer Board of Pharmacy Department of Consumer Affairs State of California Complainant SD2017801780 81831151.docx (TRANSON THEBAO NGUYEN) ACCUSATION