

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 KEVIN J. RIGLEY, State Bar No. 131800
Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 620-2558
Facsimile: (213) 897-2804

6 Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

Case No. 3187

12 DANIEL D. DO
6344 Orange Avenue
13 Long Beach, CA 90805
Pharmacy Technician License No. TCH55182

OAH No. Unassigned

**DEFAULT DECISION
AND ORDER**

14 Respondent.

[Gov. Code, §11520]

15
16 FINDINGS OF FACT

17 1. On or about November 7, 2008, Complainant Virginia K. Herold, in her
18 official capacity as the Executive Officer of the Board of Pharmacy ("Board"), filed Accusation
19 No. 3187 against Daniel D. Do (Respondent) before the Board.

20 2. On or about February 17, 2004, the Board issued Pharmacy Technician
21 License No. TCH55182 to Respondent. The Pharmacy Technician license was in full force and
22 effect at all times relevant to the charges brought herein and will expire on October 31, 2009,
23 unless renewed.

24 3. On or about November 21, 2008, Thurman Peden, an employee of the
25 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.
26 3187, the Statement to Respondent, a Request for Discovery, a Notice of Defense form and a

27 ////

28 ////

1 copy of Government Code Sections 11507.5, 11507.6 and 11507.7 to Respondent's address of
2 record with the Board, which was and is:

3 **6344 Orange Avenue**
4 **Long Beach, CA 90805**

5 A copy of the Accusation is attached as Exhibit A, and is incorporated herein by reference.

6 4. Service of the Accusation was effective as a matter of law under the
7 provisions of Government Code section 11505, subdivision (c).

8 5. On or about December 17, 2008, the aforementioned documents that had
9 been served by Certified Mail were returned by the U.S. Postal Service marked "Unclaimed."
10 The documents that had been served by First Class Mail were not returned.

11 6. Government Code section 11506 states, in pertinent part:

12 (c) The respondent shall be entitled to a hearing on the merits if the
13 respondent files a notice of defense, and the notice shall be deemed a specific
14 denial of all parts of the accusation not expressly admitted. Failure to file a notice
15 of defense shall constitute a waiver of respondent's right to a hearing, but the
16 agency in its discretion may nevertheless grant a hearing.

17 7. Respondent failed to file a Notice of Defense within 15 days after service
18 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
19 Accusation No. 3187.

20 8. California Government Code section 11520 states, in pertinent part:

21 (a) If the respondent either fails to file a notice of defense or to appear at
22 the hearing, the agency may take action based upon the respondent's express
23 admissions or upon other evidence and affidavits may be used as evidence without
24 any notice to respondent.

25 9. Pursuant to its authority under Government Code section 11520, the Board
26 finds Respondent is in default. The Board will take action without further hearing and, based on
27 the evidence on file herein, finds that the allegations in Accusation No. 3187 are true.

28 10. The total cost for investigation and enforcement in connection with the
Accusation are \$2,547.25 as of May 6, 2009.

////

////

1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Daniel D. Do has
3 subjected his Pharmacy Technician License No. TCH55182 to discipline.

4 2. A copy of the Accusation is attached.

5 3. The agency has jurisdiction to adjudicate this case by default.

6 4. The Board is authorized to revoke Respondent's Pharmacy Technician
7 license based upon the following violations alleged in the Accusation:

8 a. Business and Professions Code section 4301, subdivision (l), in
9 conjunction with California Code of Regulations, title 16, section 1770, for convictions of
10 crimes substantially related to the qualifications, functions or duties of a licensed
11 pharmacy technician: Penal Code section 459-460(b) [second degree burglary, a
12 misdemeanor] and Penal Code section 476(a) [passing fraudulent checks, a
13 misdemeanor].

14 b. Business and Professions Code section 4301, subdivision (f), for
15 unprofessional conduct relating to Respondent's conduct in connection with the criminal
16 convictions as set forth above.

17
18
19 ORDER

20 IT IS SO ORDERED that Pharmacy Technician License No. TCH55182,
21 heretofore issued to Respondent Daniel D. Do, is revoked.

22 Pursuant to Government Code section 11520, subdivision (c), Respondent may
23 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
24 within seven (7) days after service of the Decision on Respondent. The agency in its discretion

25 ////

26 ////

27 ////

28 ////

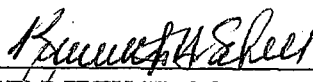
1 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
2 statute.

3 This decision shall become effective on October 9, 2009.

4 It is so ORDERED on September 9, 2009.

5
6 BOARD OF PHARMACY
7 DEPARTMENT OF CONSUMER AFFAIRS
8 STATE OF CALIFORNIA

9 By



10 KENNETH H. SCHELL
11 Board President

12 Attachment:

13 Exhibit A: Accusation No. 3187
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A
Accusation No. 3187

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 KEVIN J. RIGLEY, State Bar No. 131800
Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-5845
Facsimile: (213) 897-2804
6

7 Attorneys for Complainant

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. 3187

13 DANIEL DAI DO
6344 Orange Avenue
Long Beach, CA 90805

A C C U S A T I O N

14 Pharmacy Technician License No. TCH55182

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about February 17, 2004, the Board of Pharmacy (Board) issued
22 Pharmacy Technician License No. TCH55182 to Daniel Dai Do (Respondent). The Pharmacy
23 Technician was in full force and effect at all times relevant to the charges brought herein and will
24 expire on October 31, 2009, unless renewed.

25 **JURISDICTION**

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATUTORY PROVISIONS

4. Section 118, subdivision (b), of the Code provides in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 4300 of the Code permits the Board to take disciplinary action to suspend or revoke a license by the Board.

6. Section 4301 of the Code states, in pertinent part:
"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.

.....
"(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

1 meaning of this provision. The board may take action when the time for appeal has elapsed, or
2 the judgment of conviction has been affirmed on appeal or when an order granting probation is
3 made suspending the imposition of sentence, irrespective of a subsequent order under Section
4 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a
5 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,
6 or indictment. . . .”

7 REGULATORY PROVISIONS

8 7. California Code of Regulations, title 16, section 1770, states:

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

15 COST RECOVERY

16 8. Section 125.3 of the Code provides, in pertinent part, that the Board may
17 request the administrative law judge to direct a licentiate found to have committed a violation or
18 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
19 and enforcement of the case.

20 FIRST CAUSE FOR DISCIPLINE

21 (Conviction of a Substantially Related Crime)

22 9. Respondent is subject to disciplinary action under section 4301,
23 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, in that
24 Respondent was convicted of a crime substantially related to the qualifications, functions or
25 duties of a licensed pharmacy technician, as follows:

26 a. On or about September 20, 2006, Respondent was convicted by the Court
27 on a plea of guilty for violating one count of Penal Code section 459-460(b) (second degree
28 burglary), a misdemeanor, and one count of violating Penal Code section 476(a) (passing

1 fraudulent checks), a misdemeanor, in the criminal proceeding entitled *The People of California*
2 *v. Daniel Dai Do* (Super. Ct. Orange County, 2006, No. 06CM04966). Respondent was placed
3 on 3 years probation. The circumstances surrounding the conviction are that on or about
4 June 1, 2006, Respondent entered a bank and attempted to cash a fraudulent payroll check that
5 Respondent knew was fraudulent. The Santa Ana Police Department was contacted after the
6 Branch Manager compared the fraudulent payroll check with checks from the same company
7 already on file and observed that the signature on the check was obviously different. Respondent
8 admitted to the fraud and was placed under arrest. Upon Respondent's arrest, searches of his
9 person and vehicles incident to the arrest were conducted, during which time two additional
10 fraudulent payroll checks were seized.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct - Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)**

13 10. Respondent is subject to disciplinary action under Code section 4301,
14 subdivision (f), on the grounds of unprofessional conduct in that on or about June 1, 2006,
15 Respondent committed an act involving moral turpitude, dishonesty, fraud, deceit or corruption.
16 Complainant refers to, and by the reference incorporates, the allegations set forth above in
17 paragraph 9, subparagraph (a), as though set forth fully.

18 **PRAYER**

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

21 A. Revoking or suspending Pharmacy Technician Number TCH55182, issued
22 to Respondent;

23 B. Ordering Respondent to pay the Board the reasonable costs of the
24 investigation and enforcement of this case, pursuant to Business and Professions Code section
25 125.3, and

26 ///

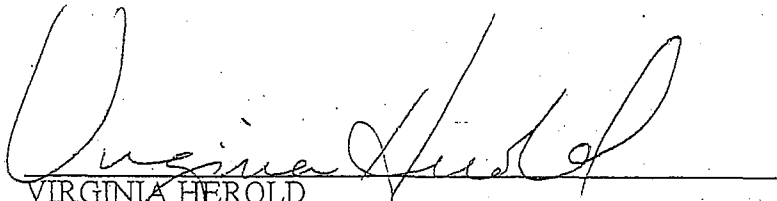
27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DATED: 11/07/08



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