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

In the Matter of the Accusation Against:

DONALD LUE
617 Post Street
San Francisco, CA 94109

Pharmacy Technician License No. TCH 57402

Respondent.

Case No. 3553

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about July 1, 2010, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3553 against Donald Lue (Respondent) before the Board of Pharmacy. A copy of Accusation No. 3553 is attached hereto as Exhibit A and incorporated herein by reference.
2. On or about July 8, 2004, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 57402 to Respondent. The Pharmacy Technician License expired on or about December 22, 2008, and has not been renewed.
3. On or about July 13, 2010, Respondent was served by Certified and First Class Mail with copies of: Accusation No. 3553; a Statement to Respondent, a Notice of Defense (2 copies); a Request for Discovery; and the Discovery Statutes (Gov.Code, §§ 11507.5, 11507.6, 11507.7) at Respondent's address of record, which was and is: 617 Post Street, San Francisco, CA 94109. Pursuant to Business and Professions Code section 136 and/or 4100, and/or California Code of Regulations, title 16, section 1704, Respondent's address of record, and any changes thereto, are required to be reported and maintained with the Board.

1 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
2 License based upon the following violations alleged in the Accusation which are supported by the
3 evidence contained in the Default Decision Investigatory Evidence Packet in this case:

4 a. In violation of Business and Professions Code section(s) 4301(l) and/or 490, by
5 reference to California Code of Regulations, title 16, section 1770, Respondent was convicted of
6 a substantially related crime, when on or about March 11, 2009, in a criminal case titled *People v.*
7 *Donald Lue*, Case No. 2399581 in San Francisco County Superior Court, Respondent was
8 convicted of violating Health and Safety Code section 11378 (Possession for sale of a controlled
9 substance - **methamphetamine**), a felony;

10 b. In violation of Business and Professions Code section(s) 4301(j), (o) and/or 4059,
11 Respondent, as described above, furnished to himself or another without valid prescription, and/or
12 conspired to furnish, and/or assisted or abetted furnishing of, controlled substance(s);

13 c. In violation of Business and Professions Code section(s) 4301(j), (o), and/or 4060,
14 and/or Health and Safety Code section 11377, Respondent, as described above, possessed,
15 conspired to possess, and/or assisted in or abetted possession of, a controlled substance;

16 d. In violation of Business and Professions Code section(s) 4301(j) and/or (o) and/or
17 Health and Safety Code section(s) 11378, and/or 11379, Respondent, as described above,
18 possessed a controlled substance for sale, or transported, sold, furnished, administered, or gave
19 away, a controlled substance, or offered, attempted, conspired, or assisted in or abetted same;

20 e. In violation of Business and Professions Code section 4301, Respondent, as described
21 above, engaged in unprofessional conduct.

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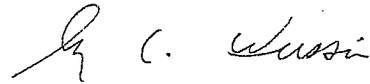
ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 57402, heretofore issued to Respondent Donald Lue, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on December 10, 2010.

It is so ORDERED November 10, 2010.



STANLEY C. WEISSER, BOARD PRESIDENT
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

20340064.DOC
DOJ Matter ID:SF2010200480

Attachment:
Exhibit A: Accusation

Exhibit A
Accusation No. 3553

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Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3553

11 **DONALD LUE**
12 **617 Post Street**
13 **San Francisco, CA 94109**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 57402**

15 Respondent.

16 Complainant alleges:

17 PARTIES

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

20 2. On or about July 8, 2004, the Board of Pharmacy issued Pharmacy Technician
21 License No. TCH 57402 to Donald Lue (Respondent). On or about July 28, 2008, the Pharmacy
22 Technician License was placed on a Family Support hold pursuant to Family Code section 17520.
23 The Pharmacy Technician License expired on December 22, 2008, and has not been renewed.

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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 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
2 revoke a license when it finds that the licensee has been convicted of a crime substantially related
3 to the qualifications, functions or duties of the license.

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

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

11 10. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
12 drug or dangerous device except upon the prescription of an authorized prescriber.

13 11. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
14 controlled substance, except that furnished upon a valid prescription/drug order.

15 12. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
16 a controlled substance in Schedule I, subdivision(s) (b), (c), or (f)(1), Schedule II, subdivision(s)
17 (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

18 13. Health and Safety Code section 11351, in pertinent part, makes it unlawful to possess
19 for sale or purchase for purposes of sale, a controlled substance in Schedule I, subdivision(s) (b),
20 (c) or (e), or any narcotic drug in Schedules III-V.

21 14. Health and Safety Code section 11352, in pertinent part, makes it unlawful to offer to,
22 attempt to, or succeed in transporting, importing, selling, furnishing, administering, or giving
23 away, a controlled substance in Schedule I, subdivision(s) (b), (c) or (e).

24 15. Health and Safety Code section 11366, in pertinent part, makes it unlawful to open or
25 maintain any place for the purpose of unlawfully selling, giving away, or using any controlled
26 substance in Schedule II, subdivision (d),

27 16. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess
28 any controlled substance in Schedule II, subdivision (d), without a prescription.

1 17. Health and Safety Code section 11378, in pertinent part, makes it unlawful to possess
2 any controlled substance in Schedule II, subdivision (d), for purposes of sale.

3 18. Health and Safety Code section 11379, in pertinent part, makes it unlawful to offer to,
4 attempt to, or succeed in transporting, importing, selling, furnishing, administering, or giving
5 away, any controlled substance in Schedule II, subdivision (d), without a prescription.

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

9 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

10 20. Section 4021 of the Code states:

11 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
12 11053) of Division 10 of the Health and Safety Code.”

13 21. Section 4022 of the Code states, in pertinent part:

14 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
15 except veterinary drugs that are labeled as such, and includes the following:

16 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
17 prescription,’ ‘Rx only,’ or words of similar import. . . .

18 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
19 prescription or furnished pursuant to Section 4006.”

20 22. **Methamphetamine** is a Schedule II controlled substance as designated by Health and
21 Safety Code section 11055(d)(2) and a dangerous drug as designated by Business and Professions
22 Code section 4022. It is a stimulant drug.

23 23. **Heroin** is a Schedule I controlled substance as designated by Health and Safety Code
24 section 11054(c)(11) and a dangerous drug as designated by Business and Professions Code
25 section 4022. It is an opiate drug.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Conviction of Substantially Related Crime(s))

3 24. Respondent is subject to discipline under section 4301(l) and/or section 490 of the
4 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of
5 substantially related crime(s), in that on or about March 11, 2009, in the criminal case *People v.*
6 *Donald Lue*, Case No. 2399581 in San Francisco County Superior Court, Respondent was
7 convicted of one (1) count of violating Health and Safety Code section 11378 (Possession for sale
8 of a controlled substance - **methamphetamine**), a felony, as follows:

9 a. On or about December 23, 2008, Respondent's residence was the subject of a
10 search pursuant to a search warrant authorizing search of his residence, person, and car. During
11 the search, San Francisco Police seized one plastic baggie of suspected **methamphetamine** from
12 Respondent's person, two additional plastic baggies of suspected **methamphetamine** from his
13 residence, three digital scales with suspected residue of **methamphetamine**, and a manual scale.
14 Police also seized a collapsible weapon (nunchaku/nunchucks). When police asked Respondent
15 about a known dealer/drug associate that had been observed exiting Respondent's residence, he
16 admitted to having sold that individual \$60.00 worth of **methamphetamine** during her visit. At
17 the conclusion of the search, Respondent was arrested on charges including Health and Safety
18 Code section 11378 (Possession for sale of controlled substance), Health and Safety Code section
19 11366 (Keeping a place for sale of controlled substance), and Penal Code section 12020 (section
20 12020, subdivision (a)(1) (Carrying a weapon not a firearm).

21 b. On or about December 26, 2008, Respondent was charged in Case No. 2399581
22 in San Francisco County Superior Court with violating (1) Health and Safety Code section 11378
23 (Possession for sale of a controlled substance - **methamphetamine**), a felony, and (2) Penal Code
24 section 12020, subdivision (a)(1) (Carrying a weapon not a firearm - nunchaku), a misdemeanor.

25 b. On or about March 11, 2009, Respondent pleaded guilty and was convicted of
26 violating Health and Safety Code section 11378 (Possession for sale of a controlled substance -
27 **methamphetamine**), a felony. The remaining count was dismissed pursuant to the plea.

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1 c. On or about April 9, 2009, the imposition of sentence was suspended in favor
2 of a probation of three (3) years, on terms and conditions including time served of 79 days, fines
3 and fees, search conditions, and registration pursuant to Health and Safety Code section 11590.

4 SECOND CAUSE FOR DISCIPLINE

5 (Furnishing of Controlled Substance)

6 25. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
7 4059 of the Code, in that Respondent, as described in paragraph 24 above, furnished/conspired to
8 furnish/assisted or abetted furnishing, without a valid prescription, a controlled substance.

9 THIRD CAUSE FOR DISCIPLINE

10 (Possession of Controlled Substance)

11 26. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
12 4060 of the Code, and/or Health and Safety Code section 11377, in that Respondent, as described
13 in paragraph 24 above, possessed, conspired to possess, and/or assisted in or abetted possession
14 of, a controlled substance, without a prescription.

15 FOURTH CAUSE FOR DISCIPLINE

16 (Possession for Sale or Giving Away of Controlled Substance)

17 27. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
18 and/or Health and Safety Code section(s) 11378 and/or 11379, in that Respondent, as described in
19 paragraph 24 above, possessed a controlled substance for sale, or transported, sold, furnished,
20 administered, or gave away, a controlled substance, without a prescription, or offered, attempted,
21 conspired, or assisted in or abetted any of these acts.

22 FIFTH CAUSE FOR DISCIPLINE

23 (Unprofessional Conduct)

24 28. Respondent is subject to discipline under section 4301 of the Code in that
25 Respondent, as described in paragraphs 24 to 27 above, engaged in unprofessional conduct.

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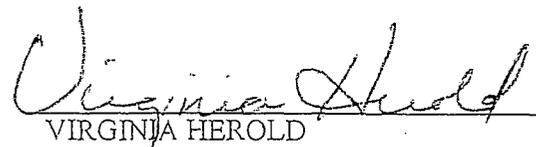
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3. Taking such other and further action as is deemed necessary and proper.

DATED: 7/1/10



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

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