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8	BEFOR BOARD OF I	
9	DEPARTMENT OF C STATE OF C	ONSUMER AFFAIRS
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11	In the Matter of the Accusation Against:	Case No. 4492
12	NELLA ALICE TRAN	DEFAULT DECISION AND ORDER
13	4718 Arden Way El Monte, CA 91731	[Gov. Code, §11520]
14	Pharmacy Technician Registration	[
15	No. TCH 124574	
16		
17	Respondent.	
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19	FINDINGS OF FACT	
20	1. On or about August 18, 2015, Compl	ainant Virginia K. Herold, in her official
21	capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,	
22	filed Accusation No. 4492 against Nella Alice Tran (Respondent) before the Board of Pharmacy.	
23	(Accusation attached as Exhibit A.)	
24	•	of Pharmacy (Board) issued Pharmacy
25	Technician Registration No. TCH 124574 to Respondent. The Pharmacy Technician Registration	
26	expired on March 31, 2014, and has not been renewed.	
27	3. On or about August 28, 2015, Respondent was served by Certified and First Class	
28	Mail copies of the Accusation No. 4492, Statement to Respondent, Notice of Defense, Request	
	(NELLA ALICE	FRAN) DEFAULT DECISION & ORDER Case No. 4492

for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100, is required to be reported and maintained with the Board. Respondent's address of record was and is: 4718 Arden Way, El Monte, CA 91731.

- 4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.
  - 5. Government Code section 11506 states, in pertinent part:
  - (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.
- 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4492.
  - 7. California Government Code section 11520 states, in pertinent part:
  - (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.
- 8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 4492, finds that the charges and allegations in Accusation No. 4492, are separately and severally, found to be true and correct by clear and convincing evidence.
- 9. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$727.50 as of October 22, 2015.

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#### **DETERMINATION OF ISSUES**

- 1. Based on the foregoing findings of fact, Respondent Nella Alice Tran has subjected her Pharmacy Technician Registration No. TCH 124574 to discipline.
  - 2. The agency has jurisdiction to adjudicate this case by default.
- 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case.:
- a. Business and Professions Code sections 490, 4300, and 4301, subdivision (1), in conjunction with California Code of Regulations, title 16, section 1770, in that, Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy technician as follows: On or about December 3, 2014, Respondent was convicted of one felony count of violating Penal Code section 311.4, subdivision (c) [using minor for sex acts] in the criminal proceeding entitled *The People of the State of California v. Nella Alice Tran* (Super. Ct. L. A. County, 2014, No. KA098671-05.)
- (b) Business and Professions Code sections 726, 4300, and 4301, in that, Respondent committed acts of sexual abuse.
- (c) Business and Professions Code sections 4300, and 4301, in that Respondent committed acts constituting gross immorality.
- (d) Business and Professions Code section 726, 4300, and 4301, subdivision (f), in that, Respondent committed acts and was convicted of a crime involving moral turpitude and/or corruption.

#### **ORDER**

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 124574, heretofore issued to Respondent Nella Alice Tran, 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 February 19, 2016.

It is so ORDERED January 20, 2016.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

By

Amy Gutierrez, Pharm.D. Board President

Attachment:

Exhibit A: Accusation

# Exhibit A

Accusation

`	,	
1 2 3 4	KAMALA D. HARRIS Attorney General of California THOMAS L. RINALDI Supervising Deputy Attorney General DESIREE A. TULLENERS Deputy Attorney General State Bar No. 157464 300 So. Spring Street, Suite 1702	
5 6	Los Angeles, CA 90013 Telephone: (213) 897-2000 Facsimile: (213) 897-2804	
7	Attorneys for Complainant	
8	BEFORE THE BOARD OF PHARMACY	
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
11	In the Matter of the Accusation Against: Case No. 4492	
12	NELLA ALICE TRAN 4718 Arden Way	
13	El Monte, CA 91731	
14	Pharmacy Technician Registration No. TCH 124574	
15	Respondent.	
17	Complainant alleges:	
18	PARTIES	
19	1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity	
20	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs ("Board").	
21	2. On or about July 17, 2012, the Board issued Pharmacy Technician Registration No.	
22	TCH 124574 to Nella Alice Tran ("Respondent"). The Pharmacy Technician Registration was in	
23	full force and effect at all times relevant to the charges brought herein. Said license was restricted	
24	on November 7, 2012, pursuant to Penal Code section 23, and expired on or about March 31,	
25	2014.	
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#### **JURISDICTION**

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

#### STATUTORY PROVISIONS

- 4. Section 118, subdivision (b), states 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 490 states:
- "(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
- (b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.
- (c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code."
  - 6. Section 726 provides, in pertinent part:
- "The commission of any act of sexual abuse., constitutes unprofessional conduct and grounds for disciplinary action..."
- 7. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or revoked."

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8. Section 4301 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:

(a) Gross immorality.

. . .

(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)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."

- Penal Code section 311.4 provides in pertinent part:
- "(c) Every person who, with knowledge that a person is a minor under the age of 18 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor under the age of 18 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 18 years, or any parent or guardian of a minor under the age of 18 years under his or her control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip, or a live performance involving, sexual conduct by a minor under the age of 18 years alone or with other persons or animals, is guilty of a felony. It is not necessary to prove commercial purposes in order to establish a violation of this subdivision."

### REGULATORY PROVISION

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

"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 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 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."

## COST RECOVERY

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

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### FIRST CAUSE FOR DISCIPLINE

### (Conviction of Substantially Related Crime)

- 12. Respondent is subject to disciplinary action under Code sections 490, 4300, and 4301, subdivision (I), in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct, in that, Respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a registered pharmacy technician which to a substantial degree evidence her present or potential unfitness to perform the functions authorized by her registration in a manner consistent with the public health, safety, or welfare, as follows:
- a. On or about December 3, 2014, after pleading nolo contendere, Respondent was convicted of one felony count of violating Penal Code section 311.4, subdivision (c) [Using Minor for Sex Acts], in the criminal proceeding entitled *The People of the State of California v. Nella Alice Tran* (Super. Ct. Los Angeles County, 2014, No. KA098671-05). The Court sentenced Respondent to 3 years in state prison, required her to register as a sex offender, ordered her to pay restitution, and fined her.
- b. The circumstances surrounding the conviction are that between approximately July 1, 2011 and June 16, 2012, Respondent induced her own daughter, then between the ages of eight (8) and nine (9) years old, to pose for sexually explicit photographs taken by Respondent and multiple adult men. In preparing for these photographs, Respondent forced her daughter to wear adult bras, "thong"-style panties, and high heels. Respondent instructed her daughter to pose in variously sexually provocative poses. Respondent and the men watched the victim pose and took photographs using their cell phones. These events would occur in Respondent's home under Respondent's supervision and instruction.

### SECOND CAUSE FOR DISCIPLINE

## (Acts of Sexual Abuse)

- 13. Respondent is subject to disciplinary action under sections 726, 4300 and 4301, on the grounds of unprofessional conduct, in that, Respondent committed acts of sexual abuse as set forth in paragraph 12 above, and as follows:
  - a. Between approximately July 1, 2011 and June 16, 2012, Respondent committed acts

of sexual penetration by a foreign object on her own daughter, then between the ages of eight (8) and nine (9) years old, by means of force, violence, duress, menace and fear of immediate and unlawful bodily injury.

- b. Between approximately July 1, 2011 and June 16, 2012, Respondent committed lewd and lascivious acts upon and with the body and certain parts of her own daughter, then between the ages of eight (8) and nine (9) years old, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of Respondent and the said child, by force, violence, duress, menace and threat of great bodily harm.
- c. Between approximately July 1, 2011 and June 16, 2012, Respondent committed acts act of sexual intercourse/sodomy on her own daughter, then between the ages of eight (8) and nine (9) years old.
- d. Between approximately July 1, 2011 and June 16, 2012. Respondent committed acts of oral copulation/sexual penetration on her own daughter, then between the ages of eight (8) and nine (9) years old.
- e. Between approximately July 1, 2011 and June 16, 2012, Respondent committed acts constituting continuous sexual abuse against her own daughter, then between the age of eight (8) and nine (9) years old.
- f. Between approximately July 1, 2011 and June 16, 2012, Respondent knowingly allowed, permitted, tolerated, ignored, aided and/or facilitated repeated and continuous sexual assaults by multiple adult men on her own daughter, then between the age of eight (8) and nine (9) years old. These acts included, but were not limited to, taking pornographic photographs, acts of oral copulation, sexual penetration, lewd acts, and other conduct constituting sexual abuse of her daughter, a very young child, in her own home.

#### THIRD CAUSE FOR DISCIPLINE

#### (Gross Immorality)

14. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (a), on the grounds of unprofessional conduct, in that, Respondent committed acts constituting gross immorality. Complainant refers to, and by this reference incorporates, the

allegations set forth above in paragraphs 12 and 13, as though fully set forth herein.

### FOURTH CAUSE FOR DISCIPLINE

(Crime and Acts Involving Moral Turpitude and/or Corruption)

Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (f), on the grounds of unprofessional conduct, in that, Respondent committed acts and was convicted of a crime involving moral turpitude and/or corruption. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 12 and 13, as though

#### **PRAYER**

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

- Revoking Pharmacy Technician Registration No. TCH 124574 issued to Nella Alice
- Ordering Nella Alice Tran to pay the Board 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.

Ungine Hero
VIRGINIA/HEROLD ' '
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California

Complainant