1		
2		
3		
4		
5		
6		
7		
8	BEFORE THE BOADD OF BUADMACY	
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
10		
11	In the Matter of the Accusation Against:	Case No. 4583
12	JOHN HUY TONG 8105 18th Street	DEFAULT DECISION AND ORDER
13		[Gov. Code, §11520]
14	Pharmacy Technician Registration No. TCH 82932	
15	Respondent.	
16		
17	FINDINGS OF FACT	
18	1. On or about July 22, 2013, Complainant Virginia K. Herold, in her official capacity	
19	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed	
20	Accusation No. 4583 against John Huy Tong (Respondent) before the Board of Pharmacy. (The	
21	Accusation is attached as Exhibit A.)	
22		of Pharmacy (Board) issued Pharmacy
23	Technician Registration No. TCH 82932 to Respondent. The Pharmacy Technician Registration	
24	was in full force and effect at all times relevant to the charges brought in Accusation No. 4583	
25	and will expire on June 30, 2014, unless renewed.	
26	3. On or about July 30, 2013, Respondent was served by Certified and First Class Mail	
27	copies of Accusation No. 4583, Statement to Respondent, Notice of Defense, Request for	
28	Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at	
	1	

1	Respondent's address of record which, pursuant to Business and Professions Code section 4100,	
2	and California Code of Regulations, title 16, section 1704, is required to be reported and	
3	maintained with the Board. Respondent's address of record was and is:	
4	8105 18th Street Westminster, CA 92683	
5		
6	4. Service of the Accusation was effective as a matter of law under the provisions of	
7	Government Code section 11505, subdivision (c) and/or Business & Professions Code section	
8	124.	
9	5. On or about August 2, 2013, the Domestic Return Receipt for the aforementioned	
10	documents served by Certified Mail was signed acknowledging receipt.	
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 respondent	
13	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	
.14	constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.	
15	7. Respondent failed to file a Notice of Defense within 15 days after service upon him	
16	of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.	
17	4583.	
18	8. California Government Code section 11520 states, in pertinent part:	
19	(a) If the respondent either fails to file a notice of defense or to appear at the bearing, the agency may take action based upon the respondent's express admissions	
20		
21	respondent.	
22	9. Pursuant to its authority under Government Code section 11520, the Board finds	
23	Respondent is in default. The Board will take action without further hearing and, based on the	
24	relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as	
25	taking official notice of all the investigatory reports, exhibits and statements contained therein on	
26	file at the Board's offices regarding the allegations contained in Accusation No. 4583, finds that	
27	the charges and allegations in Accusation No. 4583, are separately and severally, found to be true	
28	and correct by clear and convincing evidence.	
	2	

1	10. Taking official notice of its own internal records, pursuant to Business and	
2	Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation	
3	and Enforcement is \$612.50 as of August 27, 2013.	
4	DETERMINATION OF ISSUES	
5	1. Based on the foregoing findings of fact, Respondent John Huy Tong has subjected his	
6	Pharmacy Technician Registration No. TCH 82932 to discipline.	
7	2. The agency has jurisdiction to adjudicate this case by default.	Ì
8	3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician	
9	Registration based upon the following violations alleged in the Accusation which are supported	
10	by the Default Decision Investigatory Evidence Packet in this case.	
11	a. Respondent has subjected his registration to discipline under sections 490 and	
12	4301, subdivision (l) of the Code in that on or about August 18, 2008, in a criminal proceeding	
13	entitled People of the State of California v. John Huy Tong, in Orange County Superior Court,	
14	case number 08WF1638, Respondent was convicted on his plea of guilty to violating Penal Code	
15	section 245, subdivision (a)(1), aggravated assault, a crime that is substantially related to the	
16	qualifications, duties, and functions of a pharmacy technician.	
17	b. Respondent has subjected his registration to discipline under sections 490 and	
18	4301, subdivision (1) of the Code in that on or about November 1, 2012, in a criminal proceeding	
19	entitled People of the State of California v. John Huy Tong, aka John Huy Doan, in Orange	
20	County Superior Court, case number 12WM05497, Respondent was convicted on his plea of	
21	guilty to violating Vehicle Code section 23152, subdivision (a), driving under the influence, and	
22	Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC)	
23	of .08 or more, crimes that are substantially related to the qualifications, duties, and functions of a	
24	pharmacy technician.	
25	c. Respondent has subjected his registration to disciplinary action under section	
26	4301, subdivision (h) of the Code for unprofessional conduct in that on or about May 17, 2012,	
27	Respondent operated a motor vehicle while substantially impaired by alcoholic beverages.	
28	///	
		1

DEFAULT DECISION AND ORDER

1	ORDER
2	IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 82932, heretofore
3	issued to Respondent John Huy Tong, is revoked.
4	Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
5	written motion requesting that the Decision be vacated and stating the grounds relied on within
6	seven (7) days after service of the Decision on Respondent. The agency in its discretion may
7	vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.
8	This Decision shall become effective on November 22, 2013.
9	It is so ORDERED ON October 23, 2013.
10	BOARD OF PHARMACY
11	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
12	
13	By
14	
15	STAN C. WEISSER Board President
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
	4
	II DEFAULT DECISION AND ORDE

Exhibit A

Accusation

	•	
. 1	KAMALA D. HARRIS Attorney General of California	
2	Linda K. Schneider	
3	Supervising Deputy Attorney General State Bar No. 101336	
4	AMANDA DODDS Senior Legal Analyst	
5	110 West "A" Street, Suite 1100 San Diego, CA 92101	
6	P.O. Box 85266 San Diego, CA 92186-5266	
7	Telephone: (619) 645-2141 Facsimile: (619) 645-2061	
8	Attorneys for Complainant	
9		
	BEFORE THE	
10	DEPARTMENT OF C	PHARMACY CONSUMER AFFAIRS
11	STATE OF C	CALIFORNIA
12	· · · · · · · · · · · · · · · · · · ·	
13	In the Matter of the Accusation Against:	Case No. 4583
14	JOHN HUY TONG 8105 18th Street	ACCUSATION
15	Westminster, CA 92683	
16	Pharmacy Technician Registration	
17	No. TCH 82932	
18	Respondent.	
19		
20	Complainant alleges:	· · ·
21	PARTIES	
22	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity	
23	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.	
24	2. On or about July 22, 2008, the Board of Pharmacy issued Pharmacy Technician	
25	Registration Number TCH 82932 to John Huy Tong (Respondent). The Pharmacy Technician	
26	Registration was in full force and effect at all times relevant to the charges brought herein and	
27	will expire on June 30, 2014, unless renewed.	
28	///	
		1
		1 Accusation

1	JURISDICTION	
2	3. This Accusation is brought before the Board of Pharmacy (Board), Department of	
3	Consumer Affairs, under the authority of the following laws. All section references are to the	
4	Business and Professions Code (Code) unless otherwise indicated.	÷
5	4. Section 4300, subdivision (a) of the Code states: "Every license issued may be	
6	suspended or 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	
9 10	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	
11	a decision suspending or revoking the license.	
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	
15	the rehabilitation of a person when:	
16	(a) Considering the denial of a license by the board under Section 480; or	
17	(b) Considering suspension or revocation of a license under Section 490.	
18	Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.	
19	7. Section 490 of the Code provides, in pertinent part, that a board may suspend or	
20	evoke a license on the ground that the licensee has been convicted of a crime substantially	
21	elated to the qualifications, functions, or duties of the business or profession for which the	
22	icense was issued.	
23	8. Section 493 of the Code states:	
24	Notwithstanding any other provision of law, in a proceeding conducted by a	
25	board 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	
26	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	
27 28	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	
ں ہے	2	
ĺ	Accus	ati

Accusation

to fix the degree of 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 procured by fraud or misrepresentation or 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 gualifications, 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

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

10. California Code of Regulations, title 16, section 1769, 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,

1	the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:
2	(1) Nature and severity of the act(s) or offense(s).
3	(2) Total criminal record.
4	(3) The time that has elapsed since commission of the act(s) or offense(s).
5 6	(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
7	(5) Evidence, if any, of rehabilitation submitted by the licensee.
8	11. 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 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
11	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
12	public health, safety, or welfare.
13	COSTS
14	12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
15	administrative law judge to direct a licentiate found to have committed a violation or violations of
16	the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17	enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
18	renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
19	included in a stipulated settlement.
20	FIRST CAUSE FOR DISCIPLINE
21	(August 18, 2008 Criminal Conviction for Aggravated Assault on August 10, 2008)
22	13. Respondent has subjected his registration to discipline under sections 490 and 4301,
23	subdivision (1) of the Code in that he was convicted of a crime that is substantially related to the
24	qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:
25	a. On or about August 18, 2008, in a criminal proceeding entitled <i>People of the</i>
26	State of California v. John Huy Tong, in Orange County Superior Court, case number 08WF1638,
27	Respondent was convicted on his plea of guilty to violating Penal Code section 245, subdivision
28	(a)(1), aggravated assault, reduced from a felony to a misdemeanor at the request of the <i>People</i> .
	4
	Accusation

b. As a result of the conviction, on or about August 18, 2008, Respondent was granted three years informal probation, and ordered to serve 12 days in the Orange County Jail, with credit for 12 days. Respondent was prohibited from owning or possessing any type of dangerous or deadly weapon. Respondent was further ordered to pay fines and fees, and comply with probation terms. On or about September 29, 2011, the court granted Respondent's petition for dismissal. Respondent's plea of guilty was withdrawn, a plea of not guilty was entered, and the matter was dismissed pursuant to Penal Code section 1203.4.

c. The facts that led to the conviction are that on or about the evening of August 8 10, 2008, officers with the Westminster Police Department responded to a "subject with a knife" 9 call at a residence Respondent shared with other individuals. Upon arrival, the officers 10 11 encountered Respondent's brother, who refused to cooperate, was combative, and had to be 12 forcibly restrained. In an interview with Respondent, he told the officers that when he got home 13 from work, he noticed that the door to his bedroom was open and several bottles of alcohol were missing. Respondent confronted his brother in the kitchen; a fist fight ensued and Respondent 14 grabbed a knife from the kitchen drawer to defend himself. Witnesses in the household stated 15 they observed Respondent hold the knife to his brother's neck. A male in the household 16 attempted to break up the fight and was cut on his finger in the process. Respondent was arrested 17 for assault. 18

19

1

2

3

4

5

6

7

SECOND CAUSE FOR DISCIPLINE

20

(November 1, 2012 Criminal Conviction for DUI on May 17, 2012)

14. Respondent has subjected his registration to discipline under sections 490 and 4301,
subdivision (1) of the Code in that he was convicted of a crime that is substantially related to the
qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:
a. On or about November 1, 2012, in a criminal proceeding entitled *People of the*

State of California v. John Huy Tong, aka John Huy Doan, in Orange County Superior Court,
case number 12WM05497, Respondent was convicted on his plea of guilty to violating Vehicle
Code section 23152, subdivision (a), driving under the influence (Count 1), and Vehicle Code
section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 or more

5

(Count 2), misdemeanors. Respondent admitted, and the court found true the special allegation
 that Respondent's BAC was .20 percent or more, pursuant to Vehicle Code section 23538,
 subdivision (b)(2). The court certified Respondent's BAC as .22 percent.

4

5

6

7

8

b. As a result of the convictions, on or about November 1, 2012, the court stayed sentence on Count 2. As to Count 1, Respondent was granted three years informal probation, and ordered to complete a nine-moth Level 2 First Offender Alcohol Program and a MADD Victim Impact Panel session. Respondent was further ordered to pay fees, fines and restitution, and comply with standard DUI probation terms.

The facts that led to the convictions are that on or about the evening of May 17, 9 c. 2012, a patrol officer with the Huntington Beach Police Department was dispatched to investigate 10 a citizen's report of a possible drunk driver. Upon arrival at the scene, the officer was flagged 11 down by the witness and directed to a vehicle driven by Respondent. After making a traffic stop, 12 13 the officer observed that Respondent had the objective symptoms of impairment: slow, slurred speech, bloodshot and watery eyes, and an overwhelming odor of an alcoholic beverage emitting 14 from Respondent's person and breath. The officer had Respondent exit his vehicle; Respondent 15 walked with an unsteady gait. Respondent performed poorly on a series of field sobriety tests and 16 he was arrested for driving under the influence of alcohol. During booking, Respondent provided 17 a sample of blood. 18

19

20

THIRD CAUSE FOR DISCIPLINE

(Dangerous Use of Alcohol)

Respondent has subjected his registration to disciplinary action under section 4301, subdivision (h) of the Code for unprofessional conduct in that on or about May 17, 2012, Respondent operated a motor vehicle while substantially impaired by alcoholic beverages, as detailed in paragraph 14, above.

25

DISCIPLINARY CONSIDERATIONS

16. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
to California Code of Regulations, title 16, section 1769, Complainant alleges that on or about
August 30, 2006, in a criminal proceeding entitled *People of the State of California v. John Huy*

6

Tong, in Los Angeles County Superior Court, case number D280043, Respondent was convicted 1 on his plea of nolo contendere to violating Penal Code section 647, subdivision (f), public 2 intoxication. Respondent was sentenced to two days in the county jail, with credit for two days. 3 and granted one year summary probation, ordered to pay fees and fines, and to comply with 4 probation terms. 5 PRAYER 6 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, 7 8 and that following the hearing, the Board of Pharmacy issue a decision: 1. Revoking or suspending Pharmacy Technician Registration Number TCH 82932, 9 issued to John Huy Tong; 10 2. Ordering John Huy Tong to pay the Board of Pharmacy the reasonable costs of the 11 12 investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; 13 3. Taking such other and further action as deemed necessary and proper. 14 15 16 17 DATED 18 VIRGINIĂ NEROLI Executive Officer 19 Board of Pharmacy Department of Consumer Affairs 20 State of California Complainant 21 SD2013705042 22 23 24 25 26 27 28 7 Accusation