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

In the Matter of the Accusation Against:

PHUC TIEN TRUONG
1939 Ensign Way
San Jose, CA 95133

Pharmacy Technician Registration No. TCH 119828

Respondent.

Case No. 4767

**DEFAULT DECISION AND
ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about December 3, 2014, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4767 against Phuc Tien Truong (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about February 16, 2012, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 119828 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4767 and will expire on October 31, 2015, unless renewed.

1 3. On or about December 3, 2014, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 4767, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
5 section 4100, is required to be reported and maintained with the Board. Respondent's address of
6 record was and is:

7 1939 Ensign Way
8 San Jose, CA 95133.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
11 124.

12 5. On or about December 6, 2014, the aforementioned documents were delivered by the
13 U.S. Postal Service to the address of record.

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

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

20 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
21 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
22 4767.

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

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

28 9. 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

1 file at the Board's offices regarding the allegations contained in Accusation No. 4767, finds that
2 the charges and allegations in Accusation No. 4767, are separately and severally, found to be true
3 and correct by clear and convincing evidence.

4 10. Taking official notice of its own internal records, pursuant to Business and
5 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
6 and Enforcement is \$1,650.00 as of March 6, 2015.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Phuc Tien Truong has subjected
9 his Pharmacy Technician Registration No. TCH 119828 to discipline.

10 2. The agency has jurisdiction to adjudicate this case by default.

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

14 a. Business and Professions Code section 4301(l) Unprofessional Conduct – Conviction
15 of a Crime; Business and Professions Code section 4301(a) Unprofessional Conduct – Gross
16 Immorality; Business and Professions Code section 4301(f) Unprofessional Conduct – Acts
17 Involving Moral Turpitude.

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ORDER

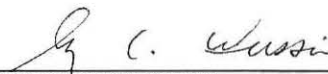
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 119828, heretofore issued to Respondent Phuc Tien Truong, is revoked.

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 May 22, 2015.

It is so ORDERED April 22, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
STAN C. WEISSER
Board President

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DOJ Matter ID:SF2013405520

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
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Supervising Deputy Attorney General
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3 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
4 Telephone: (415) 703-5556
Facsimile: (415) 703-5480
5 *Attorneys for Complainant*

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

9 In the Matter of the Accusation Against:

Case No. 4767

10 **PHUC TIEN TRUONG**
11 **a.k.a. TOM TRUONG**
12 **a.k.a. TOMMY TRUONG**
13 **1939 Ensign Way**
14 **San Jose, CA 95133**

A C C U S A T I O N

13 **Pharmacy Technician Registration No.**
14 **TCH 119828**

15 Respondent.

16
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.

21 2. On or about February 16, 2012, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 119828 to Phuc Tien Truong, a.k.a. Tom Truong, a.k.a. Tommy
23 Truong (Respondent). The Pharmacy Technician Registration was in full force and effect at all
24 times relevant to the charges brought herein and will expire on October 31, 2015, unless renewed.

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 unless otherwise indicated.

1 4. Section 4300 of the Business and Professions Code states:

2 "(a) Every license issued may be suspended or revoked.

3 "(b) The board shall discipline the holder of any license issued by the board, whose default
4 has been entered or whose case has been heard by the board and found guilty, by any of the
5 following methods:

6 "(1) Suspending judgment.

7 "(2) Placing him or her upon probation.

8 "(3) Suspending his or her right to practice for a period not exceeding one year.

9 "(4) Revoking his or her license.

10 "(5) Taking any other action in relation to disciplining him or her as the board in its
11 discretion may deem proper.

12 . . .

13 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
14 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
15 shall have all the powers granted therein. The action shall be final, except that the propriety of
16 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
17 Civil Procedure."

18 5. Section 4301 of the Business and Professions Code states:

19 "The board shall take action against any holder of a license who is guilty of unprofessional
20 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
21 Unprofessional conduct shall include, but is not limited to, any of the following:

22 "(a) Gross immorality.

23 . . .

24 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
25 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
26 whether the act is a felony or misdemeanor or not.

27 . . .

28

1 "(l) The conviction of a crime substantially related to the qualifications, functions, and
2 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
3 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
4 substances or of a violation of the statutes of this state regulating controlled substances or
5 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
6 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
7 The board may inquire into the circumstances surrounding the commission of the crime, in order
8 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
9 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
10 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
11 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
12 of this provision. The board may take action when the time for appeal has elapsed, or the
13 judgment of conviction has been affirmed on appeal or when an order granting probation is made
14 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
15 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
16 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
17 indictment.

18 . . .

19 6. Section 4300.1 of the Business and Professions Code states:

20 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
21 operation of law or by order or decision of the board or a court of law, the placement of a license
22 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
23 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
24 proceeding against, the licensee or to render a decision suspending or revoking the license."

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

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

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

8 FACTUAL BACKGROUND

9 9. On or about July 19, 2012, San Jose Police Metro officers for child exploits and the
10 Internet Crimes Against Children Task Force executed a search warrant on Respondent's
11 residence in San Jose, California. The officers seized one laptop computer, four thumb drives, and
12 one external hard drive.

13 a. On or about September 17, 2012, the Santa Clara County District Attorney's Office
14 filed a criminal complaint charging Respondent with knowingly possessing and controlling matter
15 representing information, data, and image, videos, which involved a person under 18 years of age
16 depicting that person engaging in or simulating sexual conduct in violation of Penal Code section
17 311.11(a), a felony.

18 b. On or about April 4, 2013, in a criminal proceeding entitled the *People of the State of*
19 *California v. Tom Troung*, the Respondent was convicted by his plea of nolo contendere to
20 violating Penal Code section 311.11(a) possession or control of child pornography, a felony.

21 c. On or about or April 4, 2013, respondent was placed on probation under specified
22 terms and conditions for 3 years, he was sentenced to 6 months in the county jail, ordered to
23 register as a sex offender, and was ordered to pay fines and fees.

24 FIRST CAUSE FOR DISCIPLINE

25 (Unprofessional Conduct - Conviction of a Crime)

26 10. Respondent is subject to disciplinary action for unprofessional conduct under
27 Business and Professions Code section 4301(l) in that he was convicted of a crime substantially
28 related to the qualifications, functions, and duties of a pharmacy technician. The circumstances

1 are as follows that on or about April 4, 2013, respondent pled nolo contendere to violating Penal
2 Code section 311.11(a) possession or control of child pornography, a felony.

3 SECOND CAUSE FOR DISCIPLINE

4 (Unprofessional Conduct - Gross Immorality)

5 11. Respondent is subject to disciplinary action for unprofessional conduct under
6 Business and Professions Code section 4301(a) in that he committed an act of gross immorality as
7 set forth above in paragraph 9.

8 THIRD CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct - Acts Involving Moral Turpitude)

10 12. Respondent is subject to disciplinary action for unprofessional conduct under
11 Business and Professions Code section 4301(f) in that he committed an act involving moral
12 turpitude as set forth above in paragraph 9.

13
14 PRAYER

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

17 1. Revoking or suspending Pharmacy Technician Registration Number TCH 119828,
18 issued to Phuc Tien Truong, a.k.a. Tom Truong, a.k.a. Tommy Truong.

19 2. Ordering Phuc Tien Truong, Phuc Tien Truong, a.k.a. Tom Truong, a.k.a. Tommy
20 Truong to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement
21 of this case, pursuant to Business and Professions Code section 125.3;

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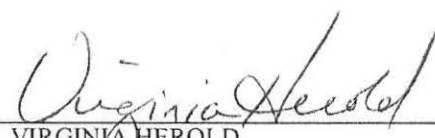
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3. Taking such other and further action as deemed necessary and proper.

DATED: 11/10/14



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

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