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

In the Matter of the Accusation Against:

Case No. 5255

**DUC THUONG VU
568 Altino Blvd.
San Jose, CA 95136**

DEFAULT DECISION AND ORDER

Pharmacy Technician License No. TCH 72742

[Gov. Code, §11520]

Respondent.

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. 5255 against Duc Thuong Vu (Respondent) before the Board of Pharmacy.

(A copy of the Accusation is attached as exhibit A.)

2. On or about October 26, 2006, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 72742 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 5255 and will expire on January 31, 2016, unless renewed.

3. On or about December 23, 2014, Respondent was served by Certified and First Class Mail with copies of: Accusation No. 5255; a Statement to Respondent; a Notice of Defense (2 copies); a Request for Discovery; and the text of the Discovery Statutes (Government Code

1 sections 11507.5, 11507.6, and 11507.7), at Respondent's address of record which was and is:
2 568 Altino Boulevard, San Jose, CA 95136.

3 4. Pursuant to Business and Professions Code section 136 and/or 4100, and/or California
4 Code of Regulations, title 16, section 1704, Respondent's address of record, and any changes
5 thereto, are required to be reported and maintained with the Board.

6 5. Service of the Accusation was effective as a matter of law under Government Code
7 section 11505, subdivision (c) and/or Business & Professions Code section 124.

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

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

14 7. Respondent failed to file a Notice of Defense within 15 days after service of the
15 Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 5255.

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

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

21 9. Pursuant to its authority under Government Code section 11520, the Board finds
22 Respondent is in default. The Board will take action without further hearing and, based on the
23 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
24 taking official notice of all the investigatory reports, exhibits and statements contained therein on
25 file at the Board's offices regarding the allegations contained in Accusation No. 5255, finds that
26 the charges and allegations in Accusation No. 5255, are separately and severally, found to be true
27 and correct by clear and convincing evidence.

28 10. 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 are \$2,547.50 as of March 23, 2015.

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DETERMINATION OF ISSUES

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2 1. Based on the foregoing findings of fact, Respondent Duc Thuong Vu has subjected
3 his Pharmacy Technician License No. TCH 72742 to discipline.

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

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

8 a. Respondent's License is subject to revocation pursuant to Business and Professions
9 Code section(s) 4301(l) and/or 490, by reference to California Code of Regulations, title 16,
10 section 1770, for the conviction of substantially related crime(s), in that on or about December 6,
11 2012, in the criminal case *People v. Duc Thuong Vu*, Case No. C1236999 in Santa Clara County
12 Superior Court, Respondent was convicted of violating Penal Code section 484-487(b)(3) (Grand
13 Theft by Employee, Agent, or Servant), a misdemeanor.

14 b. Respondent's License is subject to revocation pursuant to Business and Professions
15 Code section 4301(f) in that Respondent committed acts involving moral turpitude, dishonesty,
16 fraud, deceit, or corruption, by the acts described above and by the fact that on his 2014 license
17 renewal form, Respondent falsely checked "No" in response to a question about whether he had
18 any convictions since his prior renewal in or about January 2012.

19 c. Respondent's License is subject to revocation pursuant to Business and Professions
20 Code section(s) 4301(l) and/or 490, by reference to California Code of Regulations, title 16,
21 section 1770, for the conviction of substantially related crime(s), in that on or about March 3,
22 2014, in the criminal case *People v. Duc Thuong Vu*, Case No. C1476716 in Santa Clara County
23 Superior Court, Respondent was convicted of violating Vehicle Code section(s) 23103(a)/23103.5
24 (Reckless Driving with Alcohol Involved ["Wet Reckless"]), a misdemeanor.

25 d. Respondent's License is subject to revocation pursuant to Business and Professions
26 Code section 4301(h) in that, as stated above, he used alcohol in a dangerous/injurious manner.

27 e. Respondent's License is subject to revocation pursuant to Business and Professions
28 Code section 4301, in that Respondent, as stated above, engaged in unprofessional conduct.

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ORDER

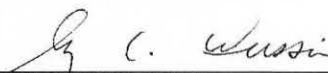
IT IS SO ORDERED that Pharmacy Technician License No. TCH 72742, heretofore issued to Respondent Duc Thuong Vu, is revoked.

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

41249765.DOC
DOJ Matter ID:SF2014409391

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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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. 5255

11 **DUC THUONG VU**
12 **568 Altino Blvd.**
13 **San Jose, CA 95136**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 72742**

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 October 26, 2006, the Board of Pharmacy issued Pharmacy Technician
21 License No. TCH 72742 to Duc Thuong Vu (Respondent). The License was in effect at all times
22 relevant to the charges brought herein and will expire on January 31, 2016, unless renewed.

23
24 JURISDICTION

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

28 ///

1 9. 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 her license or registration in a manner
7 consistent with the public health, safety, or welfare.”

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

11
12 FIRST CAUSE FOR DISCIPLINE

13 (Conviction of Substantially Related Crime(s))

14 11. Respondent is subject to discipline under section 4301(l) and/or section 490 of the
15 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of
16 substantially related crime(s), in that on or about December 6, 2012, in the criminal case *People v.*
17 *Duc Thuong Vu*, Case No. C1236999 in Santa Clara County Superior Court, Respondent was
18 convicted of violating Penal Code section 484-487(b)(3) (Grand Theft by Employee, Agent, or
19 Servant), a misdemeanor. The conviction was entered as follows:

20 a. On or about July 5, 2012, San Jose Police responded to a report by Home Depot
21 on Story Road in San Jose that Respondent, then an employee of the store, had been engaged in a
22 scheme with one or more other individuals whereby Respondent would scan merchandise, then
23 void the sale, and then permit the co-conspirator to leave the store without paying for the item(s).
24 Home Depot staff told police that Respondent scanned and voided \$3,063.42 of merchandise, and
25 that some of the stolen items were subsequently returned without a receipt for store credit. Home
26 Depot staff also told police that the co-conspirator also purchased items using a Home Depot
27 credit card belonging to Respondent. All the transactions were captured on video surveillance.
28 Respondent was arrested on suspicion of violating Penal Code section 503 (Embezzlement).

