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8	BEFOR	
9	BOARD OF P DEPARTMENT OF CO	ONSUMER AFFAIRS
10	STATE OF CA	ALIFORNIA
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12	In the Matter of the Accusation Against:	Case No. 5255
13	DUC THUONG VU 568 Altino Blvd.	
14	San Jose, CA 95136	DEFAULT DECISION AND ORDER
15	Pharmacy Technician License No. TCH 72742	[Gov. Code, §11520]
16	Respondent.	
17	FINDINGS	OF FACT
18	1. On or about December 3, 2014, Comp	blainant Virginia K. Herold, in her official
19	capacity as the Executive Officer of the Board of	Pharmacy, Department of Consumer Affairs,
20	filed Accusation No. 5255 against Duc Thuong V	u (Respondent) before the Board of Pharmacy.
21	(A copy of the Accusation is attached as exhibit A	x.)
22	2. On or about October 26, 2006, the Bo	ard of Pharmacy (Board) issued Pharmacy
23	Technician License No. TCH 72742 to Responder	nt. The Pharmacy Technician License was in
24	full force and effect at all times relevant to the cha	arges brought in Accusation No. 5255 and will
25	expire on January 31, 2016, unless renewed.	
26	3. On or about December 23, 2014, Resp	bondent was served by Certified and First Class
27	Mail with copies of: Accusation No. 5255; a State	ement to Respondent; a Notice of Defense (2
28	copies); a Request for Discovery; and the text of t	he Discovery Statutes (Government Code
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		DEFAULT DECISION AND ORDER

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 10 11	(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.
12	7. Respondent failed to file a Notice of Defense within 15 days after service of the
13	Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 5255.
14	8. California Government Code section 11520 states, in pertinent part:
15 16 17	(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.
18	9. Pursuant to its authority under Government Code section 11520, the Board finds
19	Respondent is in default. The Board will take action without further hearing and, based on the
20	relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
21	taking official notice of all the investigatory reports, exhibits and statements contained therein on
22	file at the Board's offices regarding the allegations contained in Accusation No. 5255, finds that
23	the charges and allegations in Accusation No. 5255, are separately and severally, found to be true
24	and correct by clear and convincing evidence.
25	10. Taking official notice of its own internal records, pursuant to Business and
26	Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
27	and Enforcement are \$2,547.50 as of March 23, 2015.
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	DEFAULT DECISION AND ORDER

DETERMINATION OF ISSUES 1 1. Based on the foregoing findings of fact, Respondent Duc Thuong Vu has subjected 2 his Pharmacy Technician License No. TCH 72742 to discipline. 3 2. The agency has jurisdiction to adjudicate this case by default. 4 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician 5 License based upon the following violations alleged in the Accusation which are supported by the 6 7 evidence contained in the Default Decision Evidence Packet in this case .: Respondent's License is subject to revocation pursuant to Business and Professions 8 a. Code section(s) 4301(l) and/or 490, by reference to California Code of Regulations, title 16, 9 section 1770, for the conviction of substantially related crime(s), in that on or about December 6, 10 2012, in the criminal case People v. Duc Thuong Vu, Case No. C1236999 in Santa Clara County 11 Superior Court, Respondent was convicted of violating Penal Code section 484-487(b)(3) (Grand 12 Theft by Employee, Agent, or Servant), a misdemeanor. 13 Respondent's License is subject to revocation pursuant to Business and Professions b. 14 Code section 4301(f) in that Respondent committed acts involving moral turpitude, dishonesty, 15 fraud, deceit, or corruption, by the acts described above and by the fact that on his 2014 license 16 renewal form, Respondent falsely checked "No" in response to a question about whether he had 17 any convictions since his prior renewal in or about January 2012. 18 Respondent's License is subject to revocation pursuant to Business and Professions C. 19 Code section(s) 4301(l) and/or 490, by reference to California Code of Regulations, title 16, 20 section 1770, for the conviction of substantially related crime(s), in that on or about March 3, 21 2014, in the criminal case *People v. Duc Thuong Vu*, Case No. C1476716 in Santa Clara County 22 Superior Court, Respondent was convicted of violating Vehicle Code section(s) 23103(a)/23103.5 23 (Reckless Driving with Alcohol Involved ["Wet Reckless"]), a misdemeanor. 24 d. Respondent's License is subject to revocation pursuant to Business and Professions 25 Code section 4301(h) in that, as stated above, he used alcohol in a dangerous/injurious manner. 26 Respondent's License is subject to revocation pursuant to Business and Professions e. 27

28 Code section 4301, in that Respondent, as stated above, engaged in unprofessional conduct.

1	ORDER	
2	IT IS SO ORDERED that Pharmacy Technician License No. TCH 72742, heretofore issued	
3	to Respondent Duc Thuong Vu, 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 May 22, 2015.	
9	It is so ORDERED April 22, 2015.	
10 11	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
12	Q , , , ,	
13	By <u>G. Weissin</u> STAN C. WEISSER	
14	Board President	
15	41249765.DOC DOJ Matter ID:SF2014409391	
16	Attachment:	
17	Exhibit A: Accusation	
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	4 DEFAULT DECISION AND ORDER	

Exhibit A

1	KAMALA D. HARRIS	
2	Attorney General of California FRANK H. PACOE	
3	Supervising Deputy Attorney General JOSHUA A. ROOM	
4	Supervising Deputy Attorney General State Bar No. 214663	
5	455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004	
6	Telephone: (415) 703-1299 Facsimile: (415) 703-5480	
7	Attorneys for Complainant	
8	BEFORE BOARD OF PH	
9	DEPARTMENT OF CO STATE OF CA	
10		
11	In the Matter of the Accusation Against:	Case No. 5255
12	DUC THUONG VU 568 Altino Blvd.	
13	San Jose, CA 95136	ACCUSATION
14	Pharmacy Technician License No. TCH 72742	
15	Respondent.	
16	Complainant alleges:	
17	PARTI	ES
18	1. Virginia Herold (Complainant) brings t	his 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 Boa	rd of Pharmacy issued Pharmacy Technician
21	License No. TCH 72742 to Duc Thuong Vu (Respo	ondent). The License was in effect at all times
22	relevant to the charges brought herein and will expl	ire on January 31, 2016, unless renewed.
23	· · · · · · · · · · · · · · · · · · ·	
24	JURISDIC	CTION
25	3. This Accusation is brought before the I	Board of Pharmacy (Board), Department of
26	Consumer Affairs, under the authority of the follow	ving laws. All section references are to the
27	Business and Professions Code (Code) unless other	wise indicated.
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4. Section 4011 of the Code provides that the Board shall administer and enforce both 1 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances 2 Act [Health & Safety Code, § 11000 et seq.]. 3 5. Section 4300(a) of the Code provides that every license issued by the Board may be 4 suspended or revoked. 5 Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or 6. 6 suspension of a Board-issued license, the placement of a license on a retired status, or the 7 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to 8 commence or proceed with any investigation of, or action or disciplinary proceeding against, the 9 licensee or to render a decision suspending or revoking the license. 10 11 STATUTORY AND REGULATORY PROVISIONS 12 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action 13 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but 14 not be limited to, any of the following: 15 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or 16 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and 17 whether the act is a felony or misdemeanor or not. 18 (h) The administering to oneself, of any controlled substance, or the use of any dangerous 19 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to 20 oneself, to a person holding a license under this chapter, or to any other person or to the public, or 21 to the extent that the use impairs the ability of the person to conduct with safety to the public the 22 practice authorized by the license. 23 (1) The conviction of a crime substantially related to the qualifications, functions, and duties 24 of a licensee under this chapter. 25 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or 26 revoke a license when it finds that the licensee has been convicted of a crime substantially related 27 to the qualifications, functions or duties of the license. 28 2

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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).	
	3	

1	b. On or about July 17, 2012, in <i>People v. Duc Thuong Vu</i> , Case No. C1236999 in	
2	Santa Clara County Superior Court, Respondent was charged with violating Penal Code section	
3	484-487(b)(3) (Grand Theft by Employee, Agent, or Servant), a felony. On or about December 6,	
4	2012, the charge was reduced from a felony to a misdemeanor pursuant to Penal Code section 17,	
5	Respondent pleaded nolo contendere and stipulated to a factual basis, and he was convicted of the	
6	single misdemeanor count. Imposition of sentence was suspended and Respondent was placed on	
7	court probation for two (2) years, on terms and conditions including 20 days in jail (4 days credit),	
8	restitution of \$3,062.42 to Home Depot, and payment of fines and fees.	
9		
10	SECOND CAUSE FOR DISCIPLINE	
11	(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)	
12	12. Respondent is subject to discipline under section 4301(f) of the Code, in that	
13	Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption,	
14	including the acts described in paragraph 11, and on his 2014 license renewal form, in response to	
15	a question asking whether, since his last renewal (in or about January 2012), Respondent had been	
16	convicted of a crime, Respondent checked the box for "No," despite the foregoing.	
17		
18	THIRD CAUSE FOR DISCIPLINE	
19	(Conviction of Substantially Related Crime(s))	
20	13. Respondent is subject to discipline under section 4301(1) and/or section 490 of the	
21	Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of	
22	substantially related crime(s), in that on or about March 3, 2014, in the criminal case People v.	
23	Duc Thuong Vu, Case No. C1476716 in Santa Clara County Superior Court, Respondent was	
24	convicted of violating Vehicle Code section(s) 23103(a)/23103.5 (Reckless Driving with Alcohol	
25	Involved ["Wet Reckless"]), a misdemeanor. The conviction was entered as follows:	
26	a. On or about January 17, 2014, Respondent was pulled over by the California	
27	Highway Patrol. Based on objective signs of intoxication and his performance on Field Sobriety	
28	Tests (FSTs), Respondent was placed under arrest for driving under the influence.	
	4	

1	b. On or about February 21, 2014, in <i>People v. Duc Thuong Vu</i> , Case No.
2	C1476716 in Santa Clara County Superior Court, Respondent was, charged with violating (1)
3	Vehicle Code section 23152, subdivision (a) (Driving Under the Influence of Alcohol), a
4	misdemeanor, and (2) Vehicle Code section 23152, subdivision (b) (Driving With Blood Alcohol
5	Level of 0.08% or Higher), a misdemeanor, with special allegations under each count of a prior
6	conviction for violating Vehicle Code section 23152, in Santa Clara County Case No. C1070721.
7	On or about March 3, 2014, a charge of violating Vehicle Code section(s) 23103(a)/23103.5
8	(Reckless Driving with Alcohol Involved ["Wet Reckless"]), a misdemeanor, was substituted for
9	count 1. Respondent pleaded nolo contendere to the substituted count 1, stipulated to the factual
10	basis and the finding that the conduct involved alcohol, and was convicted of the single
11	misdemeanor count. Count 2 was dismissed. Imposition of sentence was suspended and
12	Respondent was placed on court probation for two (2) years, on terms and conditions including a
13	12-hour First Offender Program, and payment of fines and fees.
14	
15	FOURTH CAUSE FOR DISCIPLINE
16	(Dangerous or Injurious Use of Alcohol)
17	14. Respondent is subject to discipline under section 4301(h) of the Code, in that, as
18	described in paragraph 13 above, Respondent used alcohol in a dangerous or injurious manner.
19	
20	FIFTH CAUSE FOR DISCIPLINE
21	(Unprofessional Conduct)
22	15. Respondent is subject to discipline under section 4301 of the Code in that, as
23	described in paragraphs 11-14 above, Respondent engaged in unprofessional conduct.
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	Accusation

1	DISCIPLINE CONSIDERATIONS	
2	16. To determine the appropriate level of discipline, if any, to be imposed on Respondent,	
3	Complainant further alleges the following:	
4	a. On or about January 30, 2002, in Case No. CC133853 in Santa Clara County	
5	Superior Court, Respondent was convicted of violating Vehicle Code section 23152, subdivision	
6	(a) (Driving Under the Influence of Alcohol/Drugs), a misdemeanor.	
7	b. On or about June 10, 2010, in Case No. C1070721 in Santa Clara County	
8	Superior Court, Respondent was convicted of violating Vehicle Code section 23152, subdivision	
9	(b) (Driving With a Blood Alcohol Level of 0.08% or Higher), a misdemeanor, and admitted to a	
10	special allegation that he had a prior conviction in Case No. CC133853, above.	
11		
12	PRAYER	
13	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,	
14	and that following the hearing, the Board of Pharmacy issue a decision:	
15	1. Revoking or suspending Pharmacy Technician License Number TCH 72742, issued to	
16	Duc Thuong Vu (Respondent);	
17	2. Ordering Respondent to pay the Board the reasonable costs of the investigation and	
18	enforcement of this case, pursuant to Business and Professions Code section 125.3;	
19	3. Taking such other and further action as is deemed necessary and proper.	
20	12/2/11 / Juin' Ch. 11	
21	DATED: 12314 /ugina feida	
22	Executive Officer Board of Pharmacy	
23	Department of Consumer Affairs State of California	
24	Complainant	
25	SF2014409391	
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	Accusation	

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