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

In the Matter of the Accusation Against:  
**DONG MINH DINH**  
1459 Hepner Ave.  
Los Angeles, CA 90041  
Pharmacy Technician Registration No. TCH  
103135  
Respondent.

Case No. 5800

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

**FINDINGS OF FACT**

1. On or about August 11, 2017, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the California State Board of Pharmacy (Board), filed Accusation No. 5800 against Dong Minh Dinh (Respondent) before the Board. (Accusation attached as Exhibit A.)

2. On or about June 10, 2010, the Board issued Pharmacy Technician Registration No. TCH 103135 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5800 and will expire on April 30, 2018, unless renewed.

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1           3.    On or about August 17, 2017, Respondent was served by Certified and First Class  
2 Mail copies of the Accusation No. 5800, 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: 1459 Hepner Ave., Los Angeles, CA 90041.

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

10          5.    On or about September 19, 2017, the aforementioned documents were returned by the  
11 U.S. Postal Service marked "Unclaimed."

12          6.    Government Code section 11506(c) states, in pertinent part:

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

18          7.    The Board takes official notice of its records and the fact that Respondent failed to  
19 file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore  
20 waived his right to a hearing on the merits of Accusation No. 5800.

21          8.    California Government Code section 11520(a) states, in pertinent part:

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

26          9.    Pursuant to its authority under Government Code section 11520, the Board finds  
27 Respondent is in default. The Board will take action without further hearing and, based on the  
28 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 offices regarding the allegations contained in Accusation No. 5800, finds that the

1 charges and allegations in Accusation No. 5800, are separately and severally, found to be true and  
2 correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and  
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
5 and Enforcement is \$1,860.00 as of September 20, 2017.

6 **DETERMINATION OF ISSUES**

7 1. Based on the foregoing findings of fact, Respondent Dong Minh Dinh has subjected  
8 his Pharmacy Technician Registration No. TCH 103135 to discipline.

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

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

13 a. Respondent is subject to disciplinary action under section 490 and section 4301,  
14 subdivision (l) of the Code, in conjunction with California Code of Regulations, title  
15 16, section 1770 in that on or about June 8, 2017, Respondent was convicted of one  
16 misdemeanor count of violating Vehicle Code section 23152(e) [driving under the  
17 influence of drugs], a crime substantially related to the qualifications, functions and  
18 duties of a pharmacy technician.

19 b. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the  
20 Code in that Respondent used alcoholic beverages and cocaine to an extent or in a  
21 manner dangerous or injurious to himself, others, and/or the public.

22 c. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the  
23 Code in that Respondent violated statutes of this state, of any other state, or of the  
24 United States regulating controlled substances and dangerous drugs. Specifically,  
25 Respondent possessed Cocaine in violation of Health and Safety Code section 11350.

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**ORDER**

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 103135, heretofore issued to Respondent Dong Minh Dinh, 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 at 5:00 p.m. on November 29, 2017.

It is so ORDERED on October 30, 2017.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
Amy Gutierrez, Pharm.D.  
Board President

DOJ Matter ID:LA2016600935

Attachment:  
Exhibit A: Accusation

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# Exhibit A

Accusation

(DONG MINH DINH)

1 XAVIER BECERRA  
Attorney General of California  
2 LINDA L. SUN  
Supervising Deputy Attorney General  
3 KATHERINE MESSANA  
Deputy Attorney General  
4 State Bar No. 272953  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2554  
6 Facsimile: (213) 897-2804  
*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. 5800

11 **DONG MINH DINH**

12 1459 Hepner Ave.  
13 Los Angeles, CA 90041

14 Pharmacy Technician Registration No. TCH  
15 103135

16 Respondent.

**A C C U S A T I O N**

17  
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
21 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.  
22 2. On or about June 10, 2010, the Board issued Pharmacy Technician Registration  
23 Number TCH 103135 to Dong Minh Dinh (Respondent). The Pharmacy Technician Registration  
24 was in full force and effect at all times relevant to the charges brought herein and will expire on  
25 April 30, 2018, unless renewed.

26 **JURISDICTION AND STATUTORY PROVISIONS**

- 27 3. This Accusation is brought before the Board under the authority of the following  
28 laws. Unless otherwise indicated, all references are to the Business and Professions Code (Code).

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4. Section 4300 of the Code states:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

(1) Medical or psychiatric evaluation.

(2) Continuing medical or psychiatric treatment.

(3) Restriction of type or circumstances of practice.

(4) Continuing participation in a board-approved rehabilitation program.

(5) Abstention from the use of alcohol or drugs.

(6) Random fluid testing for alcohol or drugs.

(7) Compliance with laws and regulations governing the practice of pharmacy.

(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

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

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5. Section 4301 of the Code provides, 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 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.

...

(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.

...

(l) 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.”

6. Section 490 of the Code 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.



1 (c) A conviction within the meaning of this section means a plea or  
2 verdict of guilty or a conviction following a plea of nolo contendere. Any action that  
3 a board is permitted to take following the establishment of a conviction may be taken  
4 when the time for appeal has elapsed, or the judgment of conviction has been  
5 affirmed on appeal, or when an order granting probation is made suspending the  
6 imposition of sentence, irrespective of a subsequent order under the provisions of  
7 Section 1203.4 of the Penal Code.

8 (d) The Legislature hereby finds and declares that the application of this  
9 section has been made unclear by the holding in *Petropoulos v. Department of Real*  
10 *Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a  
11 significant number of statutes and regulations in question, resulting in potential harm  
12 to the consumers of California from licensees who have been convicted of crimes.  
13 Therefore, the Legislature finds and declares that this section establishes an  
14 independent basis for a board to impose discipline upon a licensee, and that the  
15 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session  
16 do not constitute a change to, but rather are declaratory of, existing law.”

### 17 REGULATIONS

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

19 “For the purpose of denial, suspension, or revocation of a personal or  
20 facility license pursuant to Division 1.5 (commencing with Section 475) of the  
21 Business and Professions Code, a crime or act shall be considered substantially  
22 related to the qualifications, functions or duties of a licensee or registrant if to a  
23 substantial degree it evidences present or potential unfitness of a licensee or registrant  
24 to perform the functions authorized by his license or registration in a manner  
25 consistent with the public health, safety, or welfare.”

### 26 COST RECOVERY

27 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
28 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, with failure of the licentiate to comply subjecting the license to not being  
renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
included in a stipulated settlement.

### 29 FIRST CAUSE FOR DISCIPLINE

#### 30 (Substantially Related Criminal Conviction)

31 9. Respondent is subject to disciplinary action under section 490 and section 4301,  
32 subdivision (l) of the Code, in conjunction with California Code of Regulations, title 16, section  
33 1770 in that Respondent was convicted of a crime substantially related to the qualifications,  
34 functions and duties of a pharmacy technician, as follows:



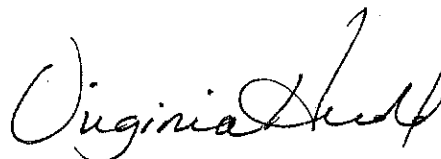
1 PRAYER

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

- 4 1. Revoking or suspending Pharmacy Technician Registration Number TCH 103135,  
5 issued to Dong Minh Dinh;  
6 2. Ordering Dong Minh Dinh to pay the Board of Pharmacy the reasonable costs of the  
7 investigation and enforcement of this case, pursuant to Business and Professions Code section  
8 125.3; and  
9 3. Taking such other and further action as deemed necessary and proper.

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12 DATED: \_\_\_\_\_

8/11/17



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

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25 controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the  
26 written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state,  
27 shall be punished by imprisonment in a county jail for not more than one year, except that such person  
28 shall instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person  
has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of  
paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring  
registration pursuant to subdivision (c) of Section 290 of the Penal Code.”