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

10 In the Matter of the Accusation Against: Case No. 3553  
11 **DONALD LUE**  
12 **617 Post Street**  
13 **San Francisco, CA 94109** **ACCUSATION**  
14 **Pharmacy Technician License No. TCH 57402**  
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 July 8, 2004, the Board of Pharmacy issued Pharmacy Technician  
21 License No. TCH 57402 to Donald Lue (Respondent). On or about July 28, 2008, the Pharmacy  
22 Technician License was placed on a Family Support hold pursuant to Family Code section 17520.  
23 The Pharmacy Technician License expired on December 22, 2008, and has not been renewed.

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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 (Code) unless otherwise indicated.

1 4. Section 4011 of the Code provides that the Board shall administer and enforce both  
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances  
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be  
5 suspended or revoked.

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,  
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a  
8 disciplinary action during the period within which the licensee may be renewed, restored, reissued  
9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not  
10 renewed within three years following its expiration may not be renewed, restored, or reinstated  
11 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of  
12 the Code provides that any other license issued by the Board may be canceled by the Board if not  
13 renewed within 60 days after its expiration, and any license canceled in this fashion may not be  
14 reissued but will instead require a new application to seek reissuance.

15 STATUTORY AND REGULATORY PROVISIONS

16 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action  
17 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but  
18 not be limited to, any of the following:

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

21 (l) The conviction of a crime substantially related to the qualifications, functions, and duties  
22 of a licensee under this chapter.

23 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
24 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
25 federal and state laws and regulations governing pharmacy, including regulations established by  
26 the board or by any other state or federal regulatory agency.

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1           8.     Section 490 of the Code provides, in pertinent part, that the Board may suspend or  
2 revoke a license when it finds that the licensee has been convicted of a crime substantially related  
3 to the qualifications, functions or duties of the license.

4           9.     California Code of Regulations, title 16, section 1770, states:

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

11          10.    Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous  
12 drug or dangerous device except upon the prescription of an authorized prescriber.

13          11.    Section 4060 of the Code provides, in pertinent part, that no person shall possess any  
14 controlled substance, except that furnished upon a valid prescription/drug order.

15          12.    Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess  
16 a controlled substance in Schedule I, subdivision(s) (b), (c), or (f)(1), Schedule II, subdivision(s)  
17 (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

18          13.    Health and Safety Code section 11351, in pertinent part, makes it unlawful to possess  
19 for sale or purchase for purposes of sale, a controlled substance in Schedule I, subdivision(s) (b),  
20 (c) or (e), or any narcotic drug in Schedules III-V.

21          14.    Health and Safety Code section 11352, in pertinent part, makes it unlawful to offer to,  
22 attempt to, or succeed in transporting, importing, selling, furnishing, administering, or giving  
23 away, a controlled substance in Schedule I, subdivision(s) (b), (c) or (e).

24          15.    Health and Safety Code section 11366, in pertinent part, makes it unlawful to open or  
25 maintain any place for the purpose of unlawfully selling, giving away, or using any controlled  
26 substance in Schedule II, subdivision (d),

27          16.    Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess  
28 any controlled substance in Schedule II, subdivision (d), without a prescription.

1 17. Health and Safety Code section 11378, in pertinent part, makes it unlawful to possess  
2 any controlled substance in Schedule II, subdivision (d), for purposes of sale.

3 18. Health and Safety Code section 11379, in pertinent part, makes it unlawful to offer to,  
4 attempt to, or succeed in transporting, importing, selling, furnishing, administering, or giving  
5 away, any controlled substance in Schedule II, subdivision (d), without a prescription.

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

9 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

10 20. Section 4021 of the Code states:

11 “Controlled substance’ means any substance listed in Chapter 2 (commencing with Section  
12 11053) of Division 10 of the Health and Safety Code.”

13 21. Section 4022 of the Code states, in pertinent part:

14 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,  
15 except veterinary drugs that are labeled as such, and includes the following:

16 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without  
17 prescription,’ ‘Rx only,’ or words of similar import. . . .

18 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
19 prescription or furnished pursuant to Section 4006.”

20 22. **Methamphetamine** is a Schedule II controlled substance as designated by Health and  
21 Safety Code section 11055(d)(2) and a dangerous drug as designated by Business and Professions  
22 Code section 4022. It is a stimulant drug.

23 23. **Heroin** is a Schedule I controlled substance as designated by Health and Safety Code  
24 section 11054(c)(11) and a dangerous drug as designated by Business and Professions Code  
25 section 4022. It is an opiate drug.

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FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

24. Respondent is subject to discipline under section 4301(l) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about March 11, 2009, in the criminal case *People v. Donald Lue*, Case No. 2399581 in San Francisco County Superior Court, Respondent was convicted of one (1) count of violating Health and Safety Code section 11378 (Possession for sale of a controlled substance - **methamphetamine**), a felony, as follows:

a. On or about December 23, 2008, Respondent's residence was the subject of a search pursuant to a search warrant authorizing search of his residence, person, and car. During the search, San Francisco Police seized one plastic baggie of suspected **methamphetamine** from Respondent's person, two additional plastic baggies of suspected **methamphetamine** from his residence, three digital scales with suspected residue of **methamphetamine**, and a manual scale. Police also seized a collapsible weapon (nunchaku/nunchucks). When police asked Respondent about a known dealer/drug associate that had been observed exiting Respondent's residence, he admitted to having sold that individual \$60.00 worth of **methamphetamine** during her visit. At the conclusion of the search, Respondent was arrested on charges including Health and Safety Code section 11378 (Possession for sale of controlled substance), Health and Safety Code section 11366 (Keeping a place for sale of controlled substance), and Penal Code section 12020 (section 12020, subdivision (a)(1) (Carrying a weapon not a firearm).

b. On or about December 26, 2008, Respondent was charged in Case No. 2399581 in San Francisco County Superior Court with violating (1) Health and Safety Code section 11378 (Possession for sale of a controlled substance - **methamphetamine**), a felony, and (2) Penal Code section 12020, subdivision (a)(1) (Carrying a weapon not a firearm - nunchaku), a misdemeanor.

b. On or about March 11, 2009, Respondent pleaded guilty and was convicted of violating Health and Safety Code section 11378 (Possession for sale of a controlled substance - **methamphetamine**), a felony. The remaining count was dismissed pursuant to the plea.

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1 c. On or about April 9, 2009, the imposition of sentence was suspended in favor  
2 of a probation of three (3) years, on terms and conditions including time served of 79 days, fines  
3 and fees, search conditions, and registration pursuant to Health and Safety Code section 11590.

4 SECOND CAUSE FOR DISCIPLINE

5 (Furnishing of Controlled Substance)

6 25. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
7 4059 of the Code, in that Respondent, as described in paragraph 24 above, furnished/conspired to  
8 furnish/assisted or abetted furnishing, without a valid prescription, a controlled substance.

9 THIRD CAUSE FOR DISCIPLINE

10 (Possession of Controlled Substance)

11 26. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
12 4060 of the Code, and/or Health and Safety Code section 11377, in that Respondent, as described  
13 in paragraph 24 above, possessed, conspired to possess, and/or assisted in or abetted possession  
14 of, a controlled substance, without a prescription.

15 FOURTH CAUSE FOR DISCIPLINE

16 (Possession for Sale or Giving Away of Controlled Substance)

17 27. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,  
18 and/or Health and Safety Code section(s) 11378 and/or 11379, in that Respondent, as described in  
19 paragraph 24 above, possessed a controlled substance for sale, or transported, sold, furnished,  
20 administered, or gave away, a controlled substance, without a prescription, or offered, attempted,  
21 conspired, or assisted in or abetted any of these acts.

22 FIFTH CAUSE FOR DISCIPLINE

23 (Unprofessional Conduct)

24 28. Respondent is subject to discipline under section 4301 of the Code in that  
25 Respondent, as described in paragraphs 24 to 27 above, engaged in unprofessional conduct.

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DISCIPLINE CONSIDERATIONS

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29. To determine the proper degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about December 6, 2007, San Francisco Police responded to a report of a stolen vehicle, found Respondent in possession of the reportedly stolen vehicle, and in a search of Respondent's person found him in possession of suspected **methamphetamine** and suspected **heroin**, as well as numerous empty baggies. Respondent was placed under arrest for violation of Health and Safety Code section 11378 (Possession for sale of controlled substance), Health and Safety Code section 11379 (Transport of controlled substance), Vehicle Code section 10851 (Vehicle theft), Penal Code section 496 (Receiving property known to be stolen), and Health and Safety Code section 11352 (Transport of controlled substance). Following arrest:

a. On or about December 11, 2007, Respondent was charged in *People v. Donald Lue*, Case No. 2345918 in San Francisco County Superior Court, with violating Health and Safety Code section 11378 (Possession for sale of controlled substance – **methamphetamine**), a felony.

b. On or about April 30, 2008, a second charge was added of violating Health and Safety Code section 11377 (Possession of controlled substance – **methamphetamine**), a felony, for the express purpose of allowing Respondent to participate in drug diversion.

c. On or about December 15, 2008, Respondent failed to appear in court for a drug diversion progress report and a bench warrant was issued. Respondent was terminated from drug diversion and the second count, added to enable drug diversion, was dismissed.

d. On or about March 11, 2009, the remaining charge was dismissed.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 57402, issued to Donald Lue (Respondent);

2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED:

7/1/10

Virginia Herold

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

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