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

11  
12 In the Matter of the Accusation Against:

13 **LAN THI TRAN NGUYEN**  
14 **810 North Palm Street**  
**La Habra, CA 90631**

15 **Pharmacist License No. RPH 43129**

16 **DU PHARMACY**  
17 **10042 Lampson Ave**  
**Garden Grove, CA 92840**

18 **Permit No. PHY 49001**

19 Respondents.  
20

Case No. 3727

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

21 Complainant alleges:

22 **PARTIES**

23 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
24 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

25 2. On or about March 6, 1990, the Board of Pharmacy issued Pharmacist License  
26 Number RPH 43129 to Lan Thi Tran Nguyen (Respondent). The Pharmacist License was in full  
27 force and effect at all times relevant to the charges brought herein and will expire on July 31,  
28 2011, unless renewed.



1 Notwithstanding any other provision of law, in a proceeding conducted by a  
2 board within the department pursuant to law to deny an application for a license or  
3 to suspend or revoke a license or otherwise take disciplinary action against a person  
4 who holds a license, upon the ground that the applicant or the licensee has been  
5 convicted of a crime substantially related to the qualifications, functions, and duties  
6 of the licensee in question, the record of conviction of the crime shall be conclusive  
7 evidence of the fact that the conviction occurred, but only of that fact, and the board  
8 may inquire into the circumstances surrounding the commission of the crime in  
9 order to fix the degree of discipline or to determine if the conviction is substantially  
10 related to the qualifications, functions, and duties of the licensee in question.

11 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,'  
12 and 'registration.'

13 10. Section 4032 of the Code states:

14 'License' means and includes any license, permit, registration, certificate, or  
15 exemption issued by the board and includes the process of applying for and renewing  
16 the same.

17 11. Section 4113(c) states:

18 The pharmacist-in-charge shall be responsible for a pharmacy's compliance  
19 with all state and federal laws and regulations pertaining to the practice of pharmacy.

20 12. Section 4301 of the Code states:

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

25 ....

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

28 ....

(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 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

1 affirmed on appeal or when an order granting probation is made suspending the  
2 imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the  
3 Penal Code allowing the person to withdraw his or her plea of guilty and to enter a  
4 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,  
5 information or indictment.

6 ....

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

12 ...

13 13. Section 4307 of the Code states:

14 (a) any person who has been denied a license or whose license has been revoked  
15 or is under suspension or who has filed to renew his or her license while it was under  
16 suspension, or who has been a manger, administrator, owner, member, officer,  
17 director, associate, or partner of any partnership, corporation, firm, or association  
18 whose application for a license has been denied or revoked, is under suspension or  
19 has been placed on probation, and while acting as the manger, administrator, owner,  
20 member, officer, director, associate, or partner had knowledge of or knowingly  
21 participated in any conduct for which the license was denied, revoked, suspended or  
22 placed on probation, shall be prohibited from serving as a manger, administrator,  
23 owner, member, officer, director, associate, or partner of a licensee as follows:

24 (1) Where a probationary license is issued or where an existing license is  
25 placed on probation, this prohibition shall remain I effect for a period not to exceed  
26 five years.

27 (2) Where the license is denied or revoked, the prohibition shall continue  
28 until the license is issued or reinstated.

(b) 'Manager, administrator, owner, member, officer, director, associate or  
partner,' as used in this section and Section 4308, may refer to a pharmacist or to any  
other person who serves in that capacity in or for a licensee.

(c) The provisions of subdivision (a) may be alleged in any pleading filed  
pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of  
the Government Code. However, no order may be issued in that case except as to a  
person who is named in the caption, as to whom the pleading alleges the applicability  
of this section, and where the person has been given notice of the proceeding as  
required by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of  
the Government Code. The authority to proceed as provided by this subdivision shall  
be in addition to the board's authority to proceed under Section 4339 or any other  
provision of law.

14. Title 16, California Code of Regulations, section 1769 states:

....

1 (b) When considering the suspension or revocation of a facility or a  
2 personal license on the ground that the licensee or the registrant has been convicted of  
a crime, the board, in evaluating the rehabilitation of such person and his present  
eligibility for a license will consider the following criteria:

3 (1) Nature and severity of the act(s) or offenses(s).

4 (2) Total criminal record.

5 (3) The time that has elapsed since commission of the act(s) or offense(s).

6 (4) Whether the licensee has complied with all terms of parole, probation,  
7 restitution or any other sanctions lawfully imposed against the licensee.

8 (5) Evidence, if any, of rehabilitation submitted by the licensee.

9 15. Title 16, California Code of Regulations, section 1770 states:

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

### 14 COST RECOVERY

15 16. Section 125.3 of the Code states, in pertinent part, that the Board may request the  
16 administrative law judge to direct a licentiate found to have committed a violation or violations of  
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
18 enforcement of the case.

### 19 DRUGS

20 17. Pseudoephedrine is a listed I chemical as defined by title 21, United States Code,  
21 Section 802(34) ("the term 'listed I chemical' means a chemical specified by regulation of the  
22 Attorney General as a chemical that is used in manufacturing a controlled substance in violation  
23 of this subchapter and is important to the manufacture of the controlled substances, and such term  
24 includes...(K) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers").

25 18. Methamphetamine is a schedule II controlled substance as designated by Health and  
26 Safety Code section 11055(d)(2), and is a dangerous drug pursuant to Business and Professions  
27 Code section 4022.  
28

**FIRST CAUSE FOR DISCIPLINE**

**(February 5, 2010 Conviction for Sale of Chemical to be Used to Manufacture Controlled Substance on May 13, 2009)**

19. Respondents are subject to disciplinary action under sections 490 and 4301(l) of the Code in that Respondent Lan Thi Tran Nguyen was convicted of a crime that is substantially related to the qualifications, duties and functions of a pharmacist. The circumstances are as follows:

a. On or about February 5, 2010, in a criminal proceeding entitled *United States v. Lan Thi Tran Nguyen*, in United States District Court for the Central District of California, case number 09-115-CJC, a jury rendered a verdict against Respondent and found her guilty of distribution of pseudoephedrine, knowing or having reasonable cause to believe that the pseudoephedrine would be used to manufacture a controlled substance, namely methamphetamine in violation of Title 21, United States Code, section 841(c)(2). Her sentencing hearing date is scheduled for January 31, 2011.

b. The facts that led to the conviction were that Respondent worked as the pharmacist in charge and owned Respondent Du Pharmacy in Garden Grove, California in April and May 2009. On or about April 28, 2009, the Drug Enforcement Administration and local police executed a probation search of the hotel room of a confidential informant. In his hotel room, law enforcement officials found 144 "blister packs" of pseudoephedrine and a business card for "Du Pharmacy." The informant agreed to cooperate with law enforcement agents and stated that he obtained the pseudoephedrine from Respondent Du Pharmacy.

c. On May 13, 2009, the informant conducted an undercover buy of pseudoephedrine. Respondent sold the informant 9 cardboard cases, each containing 24 individually wrapped blister packs of products containing pseudoephedrine. Each blister pack contained 10 pills, each pill consisted of a 240 milligram dosage. In sum, Respondent sold the informant 2,160 pills of pseudoephedrine, totaling 518.4 grams. Respondent knew that pseudoephedrine could be used to make methamphetamine and that there are limits to the amount of pseudoephedrine that can be sold in a single transaction. For example, when law enforcement

1 officials searched Respondent's pharmacy, they found an Internet printout with passages  
2 highlighted describing how pseudoephedrine could be used to make methamphetamine.  
3 Additionally, Respondent received a training entitled "Pseudoephedrine Learner's Guide" while  
4 working at CVS Pharmacy in 2006. This training discussed how pseudoephedrine could be used  
5 to make methamphetamine and that customers were limited to purchasing certain amounts of  
6 pseudoephedrine per day and per month. Respondent also admitted to law enforcement officials  
7 that she ordered cases of OHM brand cold medication containing pseudoephedrine from a  
8 wholesaler on a daily basis.

### 9 **SECOND CAUSE FOR DISCIPLINE**

#### 10 **(Unprofessional Conduct-Violating Laws Regulating Controlled Substances)**

11 20. Respondents are subject to disciplinary action under section 4301(j) of the Code for  
12 violations of the California Uniform Controlled Substances Act, including Health and Safety  
13 Code section 11100(g)(3), which limits the amount of pseudoephedrine that can be sold in a  
14 single transaction, as is more fully described in paragraph 19 above.

### 15 **THIRD CAUSE FOR DISCIPLINE**

#### 16 **(Unprofessional Conduct-Violations of the Chapter)**

17 21. Respondents are subject to disciplinary action under Code section 4301(o) for  
18 violations of the Pharmacy Act in that Respondent Lan Thi Tran Nguyen sold more than three  
19 packages of a product she knew to contain pseudoephedrine and more than 9 grams of  
20 pseudoephedrine in a single transaction in violation of Health and Safety Code section  
21 11100(g)(3), as is more fully described in paragraph 19 above.

### 22 **PRAYER**

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

- 25 1. Revoking or suspending Pharmacist License Number RPH 43129, issued to Lan Thi  
26 Tran Nguyen;
- 27 2. Revoking or suspending Permit No. PHY 49001 issued to Du Pharmacy;

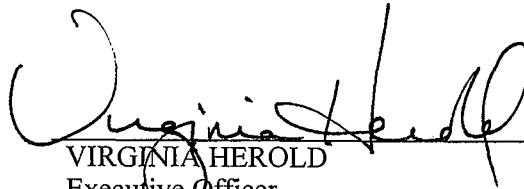
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1           2.    Ordering Lan Thi Tran Nguyen and Du Pharmacy to pay the Board of Pharmacy the  
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
3 Professions Code section 125.3;

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

5  
6  
7 DATED: \_\_\_\_\_

10/29/10



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

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