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

11 In the Matter of the Accusation Against:

Case No. 4416

12 **DAVID PYO HONG**  
13 **746 Golden Prados Drive**  
**Diamond Bar, CA 91765**

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

14 **Pharmacy Technician Registration No. TCH**  
15 **94536**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about September 30, 2009, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 94536 to David Pyo Hong ("Respondent"). On or about August 13,  
23 2013, pursuant to an order of the Orange County Superior Court, Respondent was restricted from  
24 practicing as a pharmacy technician pursuant to Penal Code section 23. Prior to August 13, 2013,  
25 Respondent's Pharmacy Technician Registration was in full force and effect at all times relevant  
26 to the charges brought herein. Respondent's Pharmacy Technician Registration will expire on  
27 March 31, 2015, unless renewed.

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1 JURISDICTION

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

5 4. Section 4300.1 of the Code states:

6 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by  
7 operation of law or by order or decision of the board or a court of law, the placement of a license  
8 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board  
9 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary  
10 proceeding against, the licensee or to render a decision suspending or revoking the license."

11 5. Section 4300 of the Code states, in pertinent part:

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

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

16 "(1) Suspending judgment.

17 "(2) Placing him or her upon probation.

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

19 "(4) Revoking his or her license.

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

22 STATUTES AND REGULATIONS

23 6. Section 490 states:

24 "(a) In addition to any other action that a board is permitted to take against a licensee, a  
25 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
26 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
27 or profession for which the license was issued.

28 "(b) Notwithstanding any other provision of law, a board may exercise any authority to

1 discipline a licensee for conviction of a crime that is independent of the authority granted under  
2 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
3 of the business or profession for which the licensee's license was issued.

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

10 7. Code section 4060 states:

11 "A person shall not possess any controlled substance, except that furnished to a person upon  
12 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
13 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-  
14 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician  
15 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a  
16 pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the  
17 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,  
18 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-  
19 midwife, nurse practitioner, or physician assistant, if in stock in containers correctly labeled with  
20 the name and address of the supplier or producer.

21 "This section does not authorize a certified nurse-midwife, a nurse practitioner, a physician  
22 assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices."

23 8. Section 4301 of the Code states, in pertinent part:

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

27 . . . .

1           "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
2 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
3 whether the act is a felony or misdemeanor or not.

4           ....

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

7           "(k) The conviction of more than one misdemeanor or any felony involving the use,  
8 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any  
9 combination of those substances.

10           "(l) The conviction of a crime substantially related to the qualifications, functions, and  
11 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
12 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
13 substances or of a violation of the statutes of this state regulating controlled substances or  
14 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
15 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
16 The board may inquire into the circumstances surrounding the commission of the crime, in order  
17 to fix the degree of discipline or, in the case of a conviction not involving controlled substances or  
18 dangerous drugs, to determine if the conviction is of an offense substantially related to the  
19 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
20 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
21 of this provision. The board may take action when the time for appeal has elapsed, or the  
22 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
23 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
24 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
25 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
26 indictment.

27           ....

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

5           9. Health and Safety Code section 11350, subdivision (a), states:

6           "(a) Except as otherwise provided in this division, every person who possesses (1) any  
7 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of  
8 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or  
9 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section  
10 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic  
11 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian  
12 licensed to practice in this state, shall be punished by imprisonment in the state prison."

13           10. Health and Safety Code section 11377, subdivision (a), states:

14           "(a) Except as authorized by law and as otherwise provided in subdivision (b) or Section  
15 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the  
16 Business and Professions Code, every person who possess any controlled substance which is (1)  
17 classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision  
18 (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified  
19 in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of  
20 subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055,  
21 unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice  
22 in this state, shall be punished by imprisonment in a county jail for a period of not more than one  
23 year or in the state prison."

24           11. California Code of Regulations, title 16, section 1770, states:

25           "For the purpose of denial, suspension, or revocation of a personal or facility license  
26 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
27 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
28 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a

1 licensee or registrant to perform the functions authorized by his license or registration in a manner  
2 consistent with the public health, safety, or welfare."

3 **COST RECOVERY**

4 12. Section 125.3 states, in pertinent part, that the Board may request the administrative  
5 law judge to direct a licentiate found to have committed a violation or violations of the licensing  
6 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
7 case.

8 **CONTROLLED SUBSTANCES**

9 13. Alprazolam, the generic name for Xanax, is a Schedule IV controlled substance  
10 pursuant to Health and Safety Code section 11057, subdivision (d)(1) and is a dangerous drug  
11 pursuant to Code section 4022.

12 14. Amphetamine is a Schedule II controlled substance pursuant to Health and Safety  
13 Code section 11055, subdivision (d)(1) and is a dangerous drug pursuant to Code section 4022.

14 15. Hydrocodone is a Schedule II controlled substance pursuant to Health and Safety  
15 Code section 11055, subdivision (b)(1)(I) and is a dangerous drug pursuant to Code section 4022.

16 16. Marijuana is a Schedule I controlled substance pursuant Health and Safety Code  
17 section 11054, subdivision (d)(13) and is a dangerous drug pursuant to Code section 4022.

18 17. Methamphetamine is a Schedule II controlled substances pursuant to Health and  
19 Safety Code section 11055, subdivision (d)(2) and is a dangerous drug pursuant to Code section  
20 4022.

21 18. Norco, a brand name for hydrocodone and acetaminophen, is a Schedule III controlled  
22 substance pursuant to Health and Safety Code section 11056, subdivision (e)(4) and is a  
23 dangerous drug pursuant to Code section 4022.

24 19. Oxycodone is a Schedule II controlled substance pursuant to Health and Safety Code  
25 section 11055, subdivision (b)(1)(M) and is a dangerous drug pursuant to Code section 4022.

26 **FIRST CAUSE FOR DISCIPLINE**

27 **(Conviction of Substantially Related Crimes)**

28 20. Respondent is subject to disciplinary action under Code sections 490 and 4301,

1 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the  
2 grounds of unprofessional conduct in that Respondent was convicted of crimes substantially  
3 related to the qualifications, functions, or duties of a registered pharmacy technician which to a  
4 substantial degree evidence his present or potential unfitness to perform the functions authorized  
5 by his registration in a manner consistent with the public health, safety, or welfare, as follows:

6 (a) On or about October 17, 2013, after pleading guilty, Respondent was convicted of one  
7 felony count of violating Health and Safety Code section 11350, subdivision (a) [possession of a  
8 controlled substance to wit: hydrocodone], one felony count of violating Penal Code section 496,  
9 subdivision (a) [receiving stolen property], one felony count of violating Penal Code sections 459-  
10 460, subdivision (b) [second degree commercial burglary], one felony count of violating Penal  
11 Code section 470b [possession of a forged driver's license and identification card to facilitate  
12 forgery], and one felony count of violating Penal Code section 530.5, subdivision (a) [identity  
13 theft] in the criminal proceeding entitled *The People of the State of California v. David Pyo Hong*  
14 (Super. Ct. Orange County, 2013, No. 13HF1566.) The Court ordered Respondent to serve 365  
15 days in Orange County Jail (sentence to run consecutively with Case Nos. 13WF1714 and  
16 12HF0706) and placed Respondent on 5 years probation.

17 (i) The circumstances surrounding the conviction are that on or about May 24,  
18 2012, Respondent and his girlfriend entered a Fed-Ex store with the intent to commit larceny.  
19 The additional circumstances surrounding the conviction are that on or about October 9, 2012, an  
20 Irvine Police Department Officer conducted a traffic enforcement stop of Respondent's vehicle.  
21 The officer discovered methamphetamine inside Respondent's vehicle, Norco pills on his person  
22 for which he had no prescription, Oxycontin pills in a pouch in a backpack in the vehicle also for  
23 which he had no prescription, fictitious driver's licenses, several of which contained Respondent's  
24 likeness, fictitious prescription scripts, and a checkbook that did not belong to Respondent.

25 (b) On or about October 17, 2013, after pleading guilty, Respondent was convicted of one  
26 felony count of violating Health and Safety Code section 11368 [forging, issuing a prescription,  
27 or obtaining, or possessing drugs secured by a forged prescription], one felony count of violating  
28 Penal Code section 530.5, subdivision (a) [identity theft], one felony count of violating Penal

1 Code section 529, subdivision (a)(3) [false personation], one felony count of violating Health and  
2 Safety Code section 11377, subdivision (a) [possession of a controlled substance to wit:  
3 methamphetamine], and one felony count of violating Health and Safety Code section 11162.5,  
4 subdivision (a) [counterfeit prescription] in the criminal proceeding entitled *The People of the*  
5 *State of California v. David Pyo Hong* (Super. Ct. Orange County, 2013, No. 13WF1714.) The  
6 Court ordered Respondent to serve 365 days in Orange County Jail (sentence to run consecutively  
7 with Case Nos. 13HF1566 and 12HF0706) and placed Respondent on 5 years probation.

8 (i) The circumstances surrounding the conviction are that on or about June 4, 2013,  
9 Respondent attempted to purchase prescription medication at a Costco pharmacy using a false  
10 prescription. Respondent presented a California driver's license that identified him as Byung Lee.  
11 While the pharmacist was attempting to verify the prescription, Respondent took the  
12 prescription and left. On or about June 6, 2013, Respondent's girlfriend attempted to purchase  
13 prescription medication at a Rite Aid Pharmacy using this same false prescription. Respondent  
14 was waiting in the parking lot and was the "getaway" driver. Respondent was subsequently  
15 detained and identified himself to officers as "Byung Lee" via a California driver's license.  
16 During a search of Respondent's vehicle, officers discovered a fraudulent prescription for pain  
17 medication, torn pieces of a prescription, various papers with doctors' information, and a stack of  
18 paper with an "RX" logo. Officers later searched the motel room where Respondent and his  
19 girlfriend were staying and they found blank prescription pads, filled out fraudulent prescription  
20 pads, lists of doctors' names and medical identification numbers, lists of patient information, a  
21 laptop computer connected to a printer, and two small baggies containing a white crystalline  
22 substance.

23 (c) On or about October 17, 2013, after pleading guilty, Respondent was convicted of one  
24 felony count of violating Health and Safety Code section 11377, subdivision (a) [possession of a  
25 controlled substance to wit: amphetamine] in the criminal proceeding entitled *The People of the*  
26 *State of California v. David Pyo Hong* (Super. Ct. Orange County, 2013, No. 12HF0706.) The  
27 Court ordered Respondent to serve 365 days in Orange County Jail (sentence to run consecutively  
28 with Case Nos. 13HF1566 and 13WF1714) and placed Respondent on 5 years probation.



1 (i) The circumstances surrounding the conviction are that on or about January 14,  
2 2012, an Irvine Police Department Officer conducted a traffic enforcement stop of Respondent's  
3 vehicle. The officer smelled the overwhelming aroma of marijuana emitting from the vehicle and  
4 Respondent's eyes were red and watery and his speech was slow and slurred. While the officer  
5 was in the process of detaining Respondent, the officer observed Respondent push a prescription  
6 pill bottle into a crease between the driver's seat and the center console. The officer recovered the  
7 pill bottle, which was prescribed to "Jenna Smith," and noticed that it contained amphetamine  
8 salts and marijuana. The officer then discovered two other pill bottles in the center console, one of  
9 which was prescribed to "Amanda Combs" that contained Xanax and marijuana.

10 (d) On or about May 1, 2013, after pleading *nolo contendere*, Respondent was convicted  
11 of one felony count of violating Penal Code section 530.5, subdivision (a) [identity theft], one  
12 felony count of violating Health and Safety Code section 11352, subdivision (a)  
13 [sale/transportation/offer to sell controlled substance to wit: dihydrocodeinone], and one felony  
14 count of violating Health and Safety Code section 11351 [possession for sale of a controlled  
15 substance to wit: oxycodone] in the criminal proceeding entitled *The People of the State of*  
16 *California v. David Pyo Hong* (Super. Ct. Los Angeles, 2013, No. KA101566.) The Court  
17 ordered Respondent to serve 6 years and 8 months in state prison but suspended the sentence and  
18 placed him on 36 months probation, ordered him to attend a 1 year in-patient treatment program  
19 at Puente House. On May 25, 2013, Respondent was terminated from Puente House.

20 (i) The circumstances surrounding the conviction are that on or about February 13,  
21 2013, Respondent was seen driving around stealing mail. After an officer stopped Respondent's  
22 vehicle, Respondent initially gave the officer a false name. During a search of the vehicle, the  
23 officer found a litany of mail addressed to other persons inside in Respondent's vehicle. The  
24 officer also found a methamphetamine smoking pipe, three prescription pill bottles, prescription  
25 blanks, a notebook with names and a "pay/owe" sheet, and a USB stick with a prescription  
26 template on it.

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1 Complainant incorporates by reference Paragraph 20, including all subparagraphs, as though fully  
2 set forth herein.

3 **PRAYER**

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

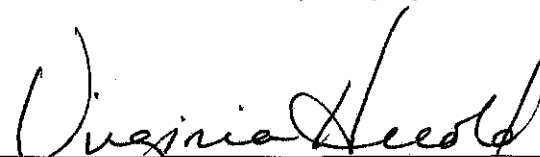
6 1. Revoking or suspending Pharmacy Technician Registration Number TCH 94536,  
7 issued to David Pyo Hong;

8 2. Ordering David Pyo Hong to pay the Board of Pharmacy the reasonable costs of the  
9 investigation and enforcement of this case, pursuant to Business and Professions Code section  
10 125.3;

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

12  
13  
14 DATED: \_\_\_\_\_

12/11/14



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

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