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9  
10 **BEFORE THE**  
**BOARD OF PHARMACY**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**  
12

13 In the Matter of the Accusation Against:

Case No. 4583

14 **JOHN HUY TONG**  
8105 18th Street  
15 Westminster, CA 92683

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

16 **Pharmacy Technician Registration**  
17 **No. TCH 82932**

18 Respondent.

19  
20 Complainant alleges:

21 **PARTIES**

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

24 2. On or about July 22, 2008, the Board of Pharmacy issued Pharmacy Technician  
25 Registration Number TCH 82932 to John Huy Tong (Respondent). The Pharmacy Technician  
26 Registration was in full force and effect at all times relevant to the charges brought herein and  
27 will expire on June 30, 2014, 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 (Code) unless otherwise indicated.

5 4. Section 4300, subdivision (a) of the Code states: "Every license issued may be  
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

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

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states:

14 Each board under the provisions of this code shall develop criteria to evaluate  
15 the rehabilitation of a person when:

- 16 (a) Considering the denial of a license by the board under Section 480; or
- 17 (b) Considering suspension or revocation of a license under Section 490.

18 Each board shall take into account all competent evidence of rehabilitation  
19 furnished by the applicant or licensee.

20 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or  
21 revoke a license on the ground that the licensee has been convicted of a crime substantially  
22 related to the qualifications, functions, or duties of the business or profession for which the  
23 license was issued.

24 8. Section 493 of the Code states:

25 Notwithstanding any other provision of law, in a proceeding conducted by a  
26 board within the department pursuant to law to deny an application for a license or to  
27 suspend or revoke a license or otherwise take disciplinary action against a person who  
28 holds a license, upon the ground that the applicant or the licensee has been convicted  
of a crime substantially related to the qualifications, functions, and duties of the  
licensee in question, the record of conviction of the crime shall be conclusive  
evidence of the fact that the conviction occurred, but only of that fact, and the board  
may inquire into the circumstances surrounding the commission of the crime in order

1 to fix the degree of discipline or to determine if the conviction is substantially related  
2 to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"  
4 and "registration."

5 9. Section 4301 of the Code states:

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

10 . . . .

11 (h) The administering to oneself, of any controlled substance, or the use of any  
12 dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
13 dangerous or injurious to oneself, to a person holding a license under this chapter, or  
14 to any other person or to the public, or to the extent that the use impairs the ability of  
15 the person to conduct with safety to the public the practice authorized by the license.

16 . . . .

17 (l) The conviction of a crime substantially related to the qualifications,  
18 functions, and duties of a licensee under this chapter. The record of conviction of a  
19 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
20 States Code regulating controlled substances or of a violation of the statutes of this  
21 state regulating controlled substances or dangerous drugs shall be conclusive  
22 evidence of unprofessional conduct. In all other cases, the record of conviction shall  
23 be conclusive evidence only of the fact that the conviction occurred. The board may  
24 inquire into the circumstances surrounding the commission of the crime, in order to  
25 fix the degree of discipline or, in the case of a conviction not involving controlled  
26 substances or dangerous drugs, to determine if the conviction is of an offense  
27 substantially related to the qualifications, functions, and duties of a licensee under this  
28 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.

. . . .

### REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, states:

. . . .

(b) When considering the suspension or revocation of a facility or a personal  
license on the ground that the licensee or the registrant has been convicted of a crime,

1 the board, in evaluating the rehabilitation of such person and his present eligibility for  
2 a license will consider the following criteria:

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

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

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

#### 13 COSTS

14 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
15 administrative law judge to direct a licentiate found to have committed a violation or violations of  
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
17 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
18 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
19 included in a stipulated settlement.

#### 20 FIRST CAUSE FOR DISCIPLINE

21 **(August 18, 2008 Criminal Conviction for Aggravated Assault on August 10, 2008)**

22 13. Respondent has subjected his registration to discipline under sections 490 and 4301,  
23 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the  
24 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

25 a. On or about August 18, 2008, in a criminal proceeding entitled *People of the*  
26 *State of California v. John Huy Tong*, in Orange County Superior Court, case number 08WF1638,  
27 Respondent was convicted on his plea of guilty to violating Penal Code section 245, subdivision  
28 (a)(1), aggravated assault, reduced from a felony to a misdemeanor at the request of the *People*.



1 (Count 2), misdemeanors. Respondent admitted, and the court found true the special allegation  
2 that Respondent's BAC was .20 percent or more, pursuant to Vehicle Code section 23538,  
3 subdivision (b)(2). The court certified Respondent's BAC as .22 percent.

4 b. As a result of the convictions, on or about November 1, 2012, the court stayed  
5 sentence on Count 2. As to Count 1, Respondent was granted three years informal probation, and  
6 ordered to complete a nine-month Level 2 First Offender Alcohol Program and a MADD Victim  
7 Impact Panel session. Respondent was further ordered to pay fees, fines and restitution, and  
8 comply with standard DUI probation terms.

9 c. The facts that led to the convictions are that on or about the evening of May 17,  
10 2012, a patrol officer with the Huntington Beach Police Department was dispatched to investigate  
11 a citizen's report of a possible drunk driver. Upon arrival at the scene, the officer was flagged  
12 down by the witness and directed to a vehicle driven by Respondent. After making a traffic stop,  
13 the officer observed that Respondent had the objective symptoms of impairment: slow, slurred  
14 speech, bloodshot and watery eyes, and an overwhelming odor of an alcoholic beverage emitting  
15 from Respondent's person and breath. The officer had Respondent exit his vehicle; Respondent  
16 walked with an unsteady gait. Respondent performed poorly on a series of field sobriety tests and  
17 he was arrested for driving under the influence of alcohol. During booking, Respondent provided  
18 a sample of blood.

### 19 **THIRD CAUSE FOR DISCIPLINE**

#### 20 **(Dangerous Use of Alcohol)**

21 15. Respondent has subjected his registration to disciplinary action under section 4301,  
22 subdivision (h) of the Code for unprofessional conduct in that on or about May 17, 2012,  
23 Respondent operated a motor vehicle while substantially impaired by alcoholic beverages, as  
24 detailed in paragraph 14, above.

### 25 **DISCIPLINARY CONSIDERATIONS**

26 16. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant  
27 to California Code of Regulations, title 16, section 1769, Complainant alleges that on or about  
28 August 30, 2006, in a criminal proceeding entitled *People of the State of California v. John Huy*

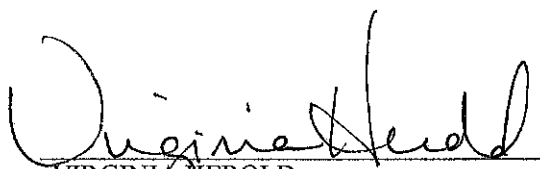
1 *Tong*, in Los Angeles County Superior Court, case number D280043, Respondent was convicted  
2 on his plea of nolo contendere to violating Penal Code section 647, subdivision (f), public  
3 intoxication. Respondent was sentenced to two days in the county jail, with credit for two days.  
4 and granted one year summary probation, ordered to pay fees and fines, and to comply with  
5 probation terms.

6 **PRAYER**

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

- 9 1. Revoking or suspending Pharmacy Technician Registration Number TCH 82932,  
10 issued to John Huy Tong;
- 11 2. Ordering John Huy Tong to pay the Board of Pharmacy the reasonable costs of the  
12 investigation and enforcement of this case, pursuant to Business and Professions Code section  
13 125.3;
- 14 3. Taking such other and further action as deemed necessary and proper.

15  
16  
17 DATED: 7/22/13

18   
19 VIRGINIA HEROLD  
20 Executive Officer  
21 Board of Pharmacy  
22 Department of Consumer Affairs  
23 State of California  
24 Complainant

25  
26  
27  
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