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

12 In the Matter of the Accusation Against:

Case No. 4961

13 **LONG NGUYEN**
14 **7545 Alonda Way**
San Diego, CA 92126

ACCUSATION

15 **Pharmacy Technician Registration**
16 **No. TCH 1111396**

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about April 4, 2011, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 1111396 to Long Nguyen (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on February 28, 2015, unless renewed.

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JURISDICTION

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

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

5. Section 4300.1 of the Code states:

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

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STATUTORY PROVISIONS

6. Section 482 of the Code states:

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

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

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

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

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who 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 to fix the degree of

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

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

5 9. Section 4022 of the Code states

6 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
7 self-use in humans or animals, and includes the following:

8 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
9 without prescription," "Rx only," or words of similar import.

10 (b) Any device that bears the statement: "Caution: federal law restricts this device
11 to sale by or on the order of a _____," "Rx only," or words of similar import, the
12 blank to be filled in with the designation of the practitioner licensed to use or order use
13 of the device.

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

16 10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
17 controlled substance, except that furnished to a person upon the prescription of a physician,
18 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

19 11. Section 4301 of the Code states:

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

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

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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 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

1 elapsed, or the judgment of conviction has been affirmed on appeal or when an order
2 granting probation is made suspending the imposition of sentence, irrespective of a
3 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.

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5 REGULATORY PROVISIONS

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

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8 (b) When considering the suspension or revocation of a facility or a personal
9 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
10 license will consider the following criteria:

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

12 (2) Total criminal record.

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

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

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

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

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

21 COSTS

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

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1 **DRUG**

2 15. Ecstasy, the street name for 3,4-methylenedioxyamphetamine (MDMA), is a
3 Schedule I controlled substance pursuant to California Health and Safety Code section 11054,
4 subdivision (d)(4), and is classified as a dangerous drug pursuant to Business and Professions
5 Code section 4022.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(September 9, 2013 Criminal Conviction for**

8 **Possession of a Controlled Substance on January 25, 2013)**

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

12 a. On or about September 9, 2013, in a criminal proceeding entitled *People of the*
13 *State of California v. Long Nguyen*, in Orange County Superior Court, case number 13HF0934,
14 Respondent was convicted on his plea of guilty to violating Health and Safety Code section
15 11379, subdivision (a), possession of a controlled substance, a felony, a count which amended by
16 interlineation the original complaint, and dismissed the original charge of violating Health and
17 Safety Code section 11378, subdivision (a), possession for sale of Ecstasy, a felony, pursuant to a
18 plea agreement.

19 b. As a result of the conviction, on or about September 9, 2013, Respondent was
20 sentenced to 365 days in the Orange County Jail, with credit for four days, and granted three
21 years formal probation. Respondent was ordered to submit to a Fourth Amendment waiver,
22 abstain from using or possessing any unauthorized controlled substances or drugs, submit to drug
23 testing, pay fees, fines, and restitution, and comply with the terms of felony probation.

24 c. The facts that led to the conviction are that on or about January 23, 2013, a
25 Special Agent with the Department of Homeland Security Immigration and Customs Enforcement
26 (ICE) was contacted by the Customs and Border Protection (CBP) regarding packages that had
27 been intercepted enroute from a Canadian "gift store" to an address in Irvine, California. The
28 packages contained a substance that tested positive for MDMA (Ecstasy). After obtaining a

1 search warrant, agents from the ICE, the U.S. Postal Service, and the Irvine Police Department
2 converged on the Irvine residence to conduct a controlled delivery of a package containing 500
3 grams of MDMA. Shortly after making the delivery of the package, the agents proceeded to
4 execute the search warrant. Four males were inside the residence, including Respondent. The
5 investigation revealed that Respondent was aware that his brother had ordered the MDMA from
6 Silk Road¹, that Respondent was tracking the delivery of the package on his cell phone, and that
7 he and his brother intended to sell the MDMA.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Violation of California Statutes Regulating Controlled Substances)**

10 17. Respondent has subjected his license to discipline under section 4301, subdivision (j)
11 of the Code for unprofessional conduct in that on or about January 25, 2013, Respondent violated
12 Health and Safety Code section 11379, subdivision (a), and Business and Professions Code
13 section 4060, as described in paragraph 16, above.

14 **PRAYER**

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

17 1. Revoking or suspending Pharmacy Technician Registration Number TCH 1111396,
18 issued to Long Nguyen;

19 2. Ordering Long Nguyen to pay the Board of Pharmacy the reasonable costs of the
20 investigation and enforcement of this case, pursuant to Business and Professions Code section
21 125.3;

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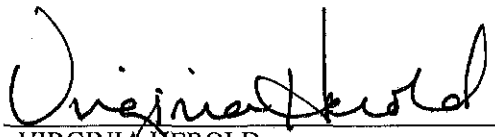
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25 _____
26 ¹ Silk Road was an online black market for the sale and purchase of illegal drugs. It was
27 operated as a Tor hidden service, such that online users could browse it anonymously and
28 securely without potential traffic monitoring. The website launched in February 2011, and was
shut down by the FBI on October 2, 2013. Silk Road (marketplace) (n.d.). In *Wikipedia*.
Retrieved November 13, 2013, from [http://en.wikipedia.org/wiki/Silk_Road_\(marketplace\)](http://en.wikipedia.org/wiki/Silk_Road_(marketplace))

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

DATED: 12/12/13



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

SD2013706112