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8	BEFORE THE BOARD OF PHARMACY	
9	DÉPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
10	le constitution de la constituti	
11	In the Matter of the Accusation Against:	Case No. 5033
12	HOANG MINH PHAM 2708 Sargent Ave.	ACCUSATION
13	San Pablo, CA 94806	
14	Pharmacy Technician Registration No. TCH 128792	
15	Respondent.	
16		
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 December 14, 2012, the Board of Pharmacy issued Pharmacy Technician	
22	Registration Number TCH 128792 to Hoang Minh Pham (Respondent). The Pharmacy	
23	Technician Registration was in full force and effect at all times relevant to the charges brought	
24	herein and will expire on January 31, 2016, unless renewed.	
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 unless otherwise indicated.	
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4. 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."

STATUTORY PROVISIONS

- 5. Section 4300 of the Code states:
- "(a) Every license issued may be suspended or revoked.
- "(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:
 - "(1) Suspending judgment.
 - "(2) Placing him or her upon probation.
 - "(3) Suspending his or her right to practice for a period not exceeding one year.
 - "(4) Revoking his or her license.
- "(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

6. Section 4301 of the Code states:

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

. . .

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

. . .

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

. . . "

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

"For the purpose of denial, suspension, or revocation of a personal or facility license 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, functions or duties of a licensee or registrant if to a substantial degree it evidences 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."

8. Section 4060 of the Code states:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified

nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

"Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices."

9. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself or herself.

COST RECOVERY

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

DRUGS

11. Marijuana is a Schedule I controlled substance as designated by Health and Safety Code section 11054(d)(13), and a dangerous drug as designated by Business and Professions Code section 4022. It is a hallucinogenic drug.

FIRST CAUSE FOR DISCIPLINE

(POSSESSION OF MARIJUANA)

- 12. Respondent is subject to disciplinary action under sections 4301(j) and 4060 in that Respondent illegally possessed marijuana, a controlled substance. The circumstances are as follows:
- 13. On or about February 7, 2013, while working as a Pharmacy Technician at Walgreens in El Sobrante, California, Respondent's coworker smelled marijuana coming from Respondent's jacket which was hanging in the employee locker area. Respondent's coworker found a small bag of marijuana in the jacket.

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SECOND CAUSE FOR DISCIPLINE 1 (UNLAWFUL SELF-ADMINISTRATION OF MARIJUANA) 2 14. Respondent is subject to disciplinary action under sections 4301(h), 4301(j) and 3 Health and Safety Code section 11170 in that Respondent unlawfully self-administered marijuana, 4 a controlled substance. The circumstances are as follows: 5 On or about February 7, 2013, Respondent admitted that he had smoked marijuana at 6 a party on the weekend prior, and that three weeks prior to that, he had consumed a brownie 7 containing marijuana. 8 PRAYER 9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, 10 and that following the hearing, the Board of Pharmacy issue a decision: 11 Revoking or suspending Pharmacy Technician Registration Number TCH 128792, 12 13 issued to Hoang Minh Pham; 2. Ordering Hoang Minh Pham to pay the Board of Pharmacy the reasonable costs of the 14 investigation and enforcement of this case, pursuant to Business and Professions Code section 15 125.3; 16 3. Taking such other and further action as deemed necessary and proper. 17 18 19 20 21 Executive Officer 22 Board of Pharmacy Department of Consumer Affairs 23 State of California Complainant 24 25 SF2013406692 40885867.doc 26 27 28