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

10 In the Matter of the Accusation Against:

Case No. 5033

11 **HOANG MINH PHAM**
12 **2708 Sargent Ave.**
13 **San Pablo, CA 94806**

ACCUSATION

14 **Pharmacy Technician Registration No. TCH**
15 **128792**

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.

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:

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

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

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

8 COST RECOVERY

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

13 DRUGS

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

17 FIRST CAUSE FOR DISCIPLINE

18 (POSSESSION OF MARIJUANA)

19 12. Respondent is subject to disciplinary action under sections 4301(j) and 4060 in that
20 Respondent illegally possessed marijuana, a controlled substance. The circumstances are as
21 follows:

22 13. On or about February 7, 2013, while working as a Pharmacy Technician at Walgreens
23 in El Sobrante, California, Respondent's coworker smelled marijuana coming from Respondent's
24 jacket which was hanging in the employee locker area. Respondent's coworker found a small bag
25 of marijuana in the jacket.

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1 SECOND CAUSE FOR DISCIPLINE

2 (UNLAWFUL SELF-ADMINISTRATION OF MARIJUANA)

3 14. Respondent is subject to disciplinary action under sections 4301(h), 4301(j) and
4 Health and Safety Code section 11170 in that Respondent unlawfully self-administered marijuana,
5 a controlled substance. The circumstances are as follows:

6 15. On or about February 7, 2013, Respondent admitted that he had smoked marijuana at
7 a party on the weekend prior, and that three weeks prior to that, he had consumed a brownie
8 containing marijuana.

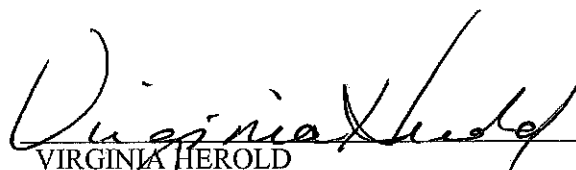
9 PRAYER

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

- 12 1. Revoking or suspending Pharmacy Technician Registration Number TCH 128792,
13 issued to Hoang Minh Pham;
- 14 2. Ordering Hoang Minh Pham to pay the Board of Pharmacy the reasonable costs of the
15 investigation and enforcement of this case, pursuant to Business and Professions Code section
16 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.
- 18

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20
21 DATED: _____

5/8/14



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

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