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

12 In the Matter of the Accusation Against:

Case No. 5367

13 **MARK KIM PHAM**  
2302 West Avalon Avenue  
14 Santa Ana, CA 92706

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

15 **Pharmacy Technician Registration**  
16 **No. TCH 74216**

17 Respondent.

18  
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 February 9, 2007, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 74216 to Mark Kim Pham (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 September 30, 2016, unless renewed.

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28 ///

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(a) of the Code states "Every license issued may be suspended or  
6 revoked."

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued license by  
9 operation of law or by order or decision of the board or a court of law, the placement of a  
10 license on a retired status, or the voluntary surrender of a license by a licensee shall not  
11 deprive the board of jurisdiction to commence or proceed with any investigation of, or  
12 action or disciplinary proceeding against, the licensee or to render a decision suspending  
13 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 the  
15 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 board  
26 within the department pursuant to law to deny an application for a license or to suspend  
27 or revoke a license or otherwise take disciplinary action against a person who holds a  
28 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 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 misrepresentation  
8 or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of  
9 the following:

10 . . . .

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

14 . . . .

15 (l) The conviction of a crime substantially related to the qualifications, functions,  
16 and duties of a licensee under this chapter. The record of conviction of a violation of  
17 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code  
18 regulating controlled substances or of a violation of the statutes of this state regulating  
19 controlled substances or dangerous drugs shall be conclusive evidence of unprofessional  
20 conduct. In all other cases, the record of conviction shall be conclusive evidence only of  
21 the fact that the conviction occurred. The board may inquire into the circumstances  
22 surrounding the commission of the crime, in order to fix the degree of discipline or, in  
23 the case of a conviction not involving controlled substances or dangerous drugs, to  
24 determine if the conviction is of an offense substantially related to the qualifications,  
25 functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a  
26 conviction following a plea of nolo contendere is deemed to be a conviction within the  
27 meaning of this provision. The board may take action when the time for appeal has  
28 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, the  
board, in evaluating the rehabilitation of such person and his present eligibility for a  
license will consider the following criteria:

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

1 (2) Total criminal record.

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

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

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

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

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

#### 11 COSTS

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

#### 18 FIRST CAUSE FOR DISCIPLINE

#### 19 (October 20, 2014 Criminal Conviction for Making Annoying Telephone Calls)

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

23 a. On or about October 20, 2014, in a criminal proceeding entitled *People of the*  
24 *State of California v. Mark Kim Pham*, in Riverside County Superior Court, case number  
25 RIF1401028, Respondent was convicted on his plea of guilty to violating Penal Code section  
26 653m(b), making annoying telephone calls, a misdemeanor. Pursuant to a plea agreement, the  
27 court dismissed additional felony counts of using personal identification of another to obtain  
28 credit (Pen. Code, § 530.5(a)), and unauthorized use of computer data (Pen. Code, § 502(c)(2));

1 as well as misdemeanor counts of accessing a computer network without permission (Pen. Code,  
2 § 502(c)(7)), and impersonating another person through the internet (Pen. Code, § 528.5(a)).

3 b. As a result of the conviction, Respondent was granted summary probation for  
4 36 months, and ordered to serve 120 days in the custody of the Riverside County Sheriff's  
5 Electronic Monitoring Program, pay fees, fines, and restitution, and not have any direct or  
6 indirect contact with the victim. Respondent was required to submit to a Fourth Amendment  
7 waiver for the search and/or seizure of all computers, memory storage devices, electronic mail, or  
8 log files and data stored electronically on any media. He was further ordered not conceal the  
9 source, destination or content of any electronic communication, to provide truthful information  
10 regarding his identity on all internet and e-mail communications, and not knowingly possess any  
11 encryption technology or software designed to delete, conceal, protect or secure computer log  
12 files or electronically stored data from the access of any law enforcement agency or probation  
13 officer.

14 c. The facts that led to the conviction are that on or about June 24, 2013, the  
15 victim reported to the Corona Police Department that she was being stalked by a former  
16 acquaintance (Respondent) she met in 2009 while she was employed as an exotic dancer at a  
17 gentleman's club. The victim insisted they were only friends and that she never provided  
18 Respondent with any personal information about herself except for the name of her favorite  
19 author. By the fourth week, the victim started receiving telephone calls from Respondent. The  
20 victim did not know how Respondent got her number and told him to stop calling her.  
21 Respondent continued to contact the victim multiple times a day via telephone and text messages.  
22 The victim blocked Respondent's telephone, but continued to get telephone calls from  
23 Respondent. The victim changed her telephone number and contacted the Anaheim Police  
24 Department. Around this time, the victim stopped working at the club, however, Respondent  
25 continued to stop by the club asking about her whereabouts. The victim returned to working at  
26 the club in 2012. During one of her shifts, Respondent came to the club but the victim asked  
27 security to deny him entrance. After her shift, she began receiving texts and telephone calls from  
28 Respondent. The victim blocked Respondent's number and did not respond to his texts. The

1 victim started receiving telephone calls at all hours of the day and night from "blocked" telephone  
2 numbers. Respondent called the victim's sister, who told him to stop calling her and the victim.  
3 On June 22, 2013, the victim changed her telephone number for the second time to avoid  
4 Respondent. The next day, the victim received a telephone call from a blocked number. When  
5 she returned the call, she discovered it was Respondent and hung up. Respondent sent the victim  
6 multiple text messages, including one stating that he had mailed the victim a package containing  
7 gifts for herself and her family. The victim provided law enforcement with contact information  
8 for Respondent. Respondent appeared for an interview with the Corona Police Department on  
9 June 25, 2013. He admitted that he had been calling the victim, but claimed the victim provided  
10 him with her contact information and he did not understand why she contacted the police. On  
11 July 1, 2013, Respondent signed a Consent to Search for his cell phones, computer and external  
12 hard drives. A forensic examination of these items revealed that after many attempts to access  
13 the victim's Verizon wireless account, Respondent was able to access the account on June 18,  
14 2013. Respondent used paid internet search services to search for the victim's telephone number,  
15 he mapped the victim's home address on Google Maps, he possessed photographs of the victim  
16 downloaded from her Facebook account, and a Twitter account under the victim's name had been  
17 created without her knowledge.

### **SECOND CAUSE FOR DISCIPLINE**

#### **(Commission of Acts Involving Dishonesty, Fraud, Deceit or Corruption)**

19 14. Respondent has subjected his registration to discipline under section 4301(f) of the  
20 Code for unprofessional conduct in that he used illegal means to obtain the personal identification  
21 of another, and he impersonated another person through the internet, as described in paragraph  
22 13, above, acts involving dishonesty, fraud, deceit or corruption.  
23

### **THIRD CAUSE FOR DISCIPLINE**

#### **(July 22, 2009 Criminal Conviction for Violating a Restraining Order on April 20, 2009)**

25 15. Respondent has subjected his registration to discipline under sections 490 and 4301(l)  
26 of the Code in that he was convicted of a crime that is substantially related to the qualifications,  
27 duties, and functions of a pharmacy technician. The circumstances are as follows:  
28

1 a. On or about July 22, 2009, in a criminal proceeding entitled *People of the State*  
2 *of California v. Mark Kim Pham*, in Riverside County Superior Court, case number RIM535387,  
3 Respondent was convicted on his plea of guilty to violating Penal Code section 166(a)(4), willful  
4 violation of a restraining order, a misdemeanor.

5 b. As a result of the conviction, Respondent was granted summary probation for  
6 36 months, and ordered to serve 10 days in the custody of the Riverside County Sheriff's Office,  
7 pay fees, fines, and restitution, and not have any direct or indirect contact with the victim.

8 **PRAYER**

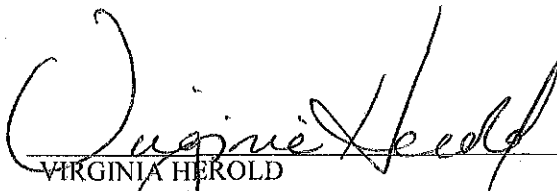
9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
10 and that following the hearing, the Board of Pharmacy issue a decision:

11 1. Revoking or suspending Pharmacy Technician Registration Number TCH 74216,  
12 issued to Mark Kim Pham;

13 2. Ordering Mark Kim 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 DATED: 3/13/15

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

26  
27  
28 SD2014708446