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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. 5800

11 **DONG MINH DINH**

12 1459 Hepner Ave.  
13 Los Angeles, CA 90041

14 Pharmacy Technician Registration No. TCH  
15 103135

16 Respondent.

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

17  
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about June 10, 2010, the Board issued Pharmacy Technician Registration  
23 Number TCH 103135 to Dong Minh Dinh (Respondent). The Pharmacy Technician Registration  
24 was in full force and effect at all times relevant to the charges brought herein and will expire on  
25 April 30, 2018, unless renewed.

26 **JURISDICTION AND STATUTORY PROVISIONS**

27 3. This Accusation is brought before the Board under the authority of the following  
28 laws. Unless otherwise indicated, all references are to the Business and Professions Code (Code).

1           4.    Section 4300 of the Code states:

2                   “(a) Every license issued may be suspended or revoked.

3                   (b) The board shall discipline the holder of any license issued by the  
4 board, whose default has been entered or whose case has been heard by the board and  
found guilty, by any of the following methods:

5                           (1) Suspending judgment.

6                           (2) Placing him or her upon probation.

7                           (3) Suspending his or her right to practice for a period not exceeding one  
8 year.

9                           (4) Revoking his or her license.

10                          (5) Taking any other action in relation to disciplining him or her as the  
board in its discretion may deem proper.

11                          (c) The board may refuse a license to any applicant guilty of  
12 unprofessional conduct. The board may, in its sole discretion, issue a probationary  
13 license to any applicant for a license who is guilty of unprofessional conduct and who  
has met all other requirements for licensure. The board may issue the license subject  
14 to any terms or conditions not contrary to public policy, including, but not limited to,  
the following:

15                                   (1) Medical or psychiatric evaluation.

16                                   (2) Continuing medical or psychiatric treatment.

17                                   (3) Restriction of type or circumstances of practice.

18                                   (4) Continuing participation in a board-approved rehabilitation program.

19                                   (5) Abstention from the use of alcohol or drugs.

20                                   (6) Random fluid testing for alcohol or drugs.

21                                   (7) Compliance with laws and regulations governing the practice of  
pharmacy.

22                          (d) The board may initiate disciplinary proceedings to revoke or suspend  
23 any probationary certificate of licensure for any violation of the terms and conditions  
of probation. Upon satisfactory completion of probation, the board shall convert the  
24 probationary certificate to a regular certificate, free of conditions.

25                          (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  
26 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  
27 superior court pursuant to Section 1094.5 of the Code of Civil Procedure.”

28    ///

1           5.     Section 4301 of the Code provides, in pertinent part:

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

5                     ...

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

11                     ...

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

14                     ...

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

6.     Section 490 of the Code states:

                   “(a) In addition to any other action that a board is permitted to take  
against a licensee, a board may suspend or revoke a license on the ground that the  
licensee has been convicted of a crime, if the crime is substantially related to the  
qualifications, functions, or duties of the business or profession for which the license  
was issued.

                   (b) Notwithstanding any other provision of law, a board may exercise any  
authority to discipline a licensee for conviction of a crime that is independent of the  
authority granted under subdivision (a) only if the crime is substantially related to the  
qualifications, functions, or duties of the business or profession for which the  
licensee's license was issued.

1 (c) A conviction within the meaning of this section means a plea or  
2 verdict of guilty or a conviction following a plea of nolo contendere. Any action that  
3 a board is permitted to take following the establishment of a conviction may be taken  
4 when the time for appeal has elapsed, or the judgment of conviction has been  
5 affirmed on appeal, or when an order granting probation is made suspending the  
6 imposition of sentence, irrespective of a subsequent order under the provisions of  
7 Section 1203.4 of the Penal Code.

8 (d) The Legislature hereby finds and declares that the application of this  
9 section has been made unclear by the holding in *Petropoulos v. Department of Real  
10 Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a  
11 significant number of statutes and regulations in question, resulting in potential harm  
12 to the consumers of California from licensees who have been convicted of crimes.  
13 Therefore, the Legislature finds and declares that this section establishes an  
14 independent basis for a board to impose discipline upon a licensee, and that the  
15 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session  
16 do not constitute a change to, but rather are declaratory of, existing law.”

### 17 REGULATIONS

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

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

### 26 COST RECOVERY

27 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
28 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, with failure of the licentiate to comply subjecting the license to not being  
renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
included in a stipulated settlement.

### 29 FIRST CAUSE FOR DISCIPLINE

#### 30 (Substantially Related Criminal Conviction)

31 9. Respondent is subject to disciplinary action under section 490 and section 4301,  
32 subdivision (l) of the Code, in conjunction with California Code of Regulations, title 16, section  
33 1770 in that Respondent was convicted of a crime substantially related to the qualifications,  
34 functions and duties of a pharmacy technician, as follows:

1           10. On or about June 8, 2017, Respondent was convicted of one misdemeanor count of  
2 violating Vehicle Code section 23152(e) [driving under the influence of drugs] in the criminal  
3 proceeding entitled *The People of the State of California v. Dong Minh Dinh* (Super. Ct. of  
4 California, County of Orange, 2016, Case No. 16WM03391). Respondent was placed on  
5 probation for three years, with terms and conditions. The circumstances underlying the criminal  
6 conviction are that on or about November 3, 2015, Garden Grove Police Department officers  
7 conducted a traffic enforcement stop on a vehicle driven by Respondent. Respondent displayed  
8 the objective signs and symptoms of alcohol intoxication and being under the influence of an  
9 illegal stimulant. Respondent admitted to being in possession of Cocaine<sup>1</sup>. Respondent admitted  
10 to drinking alcoholic beverages and to taking Cocaine prior to driving.

11                                       **SECOND CAUSE FOR DISCIPLINE**

12                                       **(Dangerous Use of Controlled Substances/Dangerous Drugs)**

13           11. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the  
14 Code in that Respondent used alcoholic beverages and cocaine to an extent or in a manner  
15 dangerous or injurious to himself, others, and/or the public. The conduct is described in more  
16 particularity in paragraph 10 above, inclusive, and hereby incorporated by reference.

17                                       **THIRD CAUSE FOR DISCIPLINE**

18                                       **(Violation of Statutes Regulating Controlled Substances)**

19           12. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the  
20 Code in that Respondent violated statutes of this state, of any other state, or of the United States  
21 regulating controlled substances and dangerous drugs. Specifically, Respondent possessed  
22 Cocaine in violation of Health and Safety Code section 11350<sup>2</sup>. The conduct is described in more  
23 particularity in paragraph 10 above, inclusive, and hereby incorporated by reference.

24                                       <sup>1</sup> Cocaine is a Schedule II controlled substance pursuant to Health and Safety Code section 11055 and is  
25 categorized as a dangerous drug pursuant to section 4022 of the Code.

<sup>2</sup> Health and Safety Code section 11350 provides in pertinent part:

26                                       “(a) Except as otherwise provided in this division, every person who possesses (1) any  
27 controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section  
28 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in  
subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any

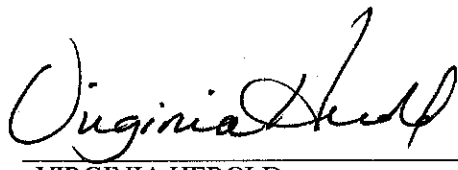
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**PRAYER**

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

- 1. Revoking or suspending Pharmacy Technician Registration Number TCH 103135, issued to Dong Minh Dinh;
- 2. Ordering Dong Minh Dinh to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
- 3. Taking such other and further action as deemed necessary and proper.

DATED: 8/11/17



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

LA2016600935

controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more than one year, except that such person shall instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.”