

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

In the Matter of the Accusation Against:

PHILLIP LUU

Pharmacy Technician Registration No. TCH 79928

Respondent.

Case No. 3833

OAH No. 2011031330

DECISION AND ORDER

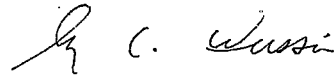
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on March 14, 2012.

It is so ORDERED on February 13, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

PHILLIP LUU,

Pharmacy Technician License
No. TCH 79928,

Respondent.

Agency Case No. 3833

OAH Case No. 2011031330

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge, Office of Administrative Hearings, heard this matter on October 20, 2011, in Los Angeles, California.

Gillian E. Friedman, Deputy Attorney General, represented Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy (Board).

Phillip Luu (Respondent) represented himself.

Complainant amended the Accusation according to proof, as follows: page six, lines seven and eight originally read, “. . . on or about December 15, 2009, Respondent was admittedly in possession of Vicodin and Xanax, controlled substances and dangerous drugs, without valid prescriptions” The amendment read, “. . . on or about December 15, 2009, Respondent was admittedly in possession of Vicodin, Xanax, and other controlled substances and dangerous drugs, without valid prescriptions” Pursuant to Government Code section 11507, the amendment was accepted. Respondent did not object to the amendment, and upon inquiry by the Administrative Law Judge, Respondent did not request any additional time to present his defense to the amended allegation.

The parties submitted the matter for decision on October 20, 2011.

STATEMENT OF THE CASE

Complainant contends revocation of Respondent’s pharmacy technician license is warranted because of a 2010 misdemeanor criminal conviction, the dangerous use of alcohol relating to that conviction, the illegal possession of controlled substances in 2009, and the commission of acts involving moral turpitude, dishonesty, fraud, deceit, or corruption for all of the alleged misconduct.

Respondent acknowledged the majority of his misconduct and asked the Board to allow him to keep his license so that he may continue working and progressing within the pharmacy profession.

FACTUAL FINDINGS

1. On or about January 27, 2011, Complainant filed the Accusation in her official capacity. Respondent filed the Notice of Defense on or about February 25, 2011

2. The Board issued original pharmacy technician registration number TCH 79928 to Respondent on December 3, 2007; it expires on November 30, 2011, unless renewed.

3. On July 23, 2010, following a nolo contendere plea, the Los Angeles County Superior Court, in case number 0VY02688, convicted Respondent of violating Vehicle Code section 23152, subdivision (b) (driving a vehicle with a .08 percent or more blood alcohol level), a misdemeanor. The court suspended the proceeding of sentence and placed Respondent on three years summary probation.

4. The terms and conditions of probation included, among others, serving 13 days in the county jail (less credit for two days) and completing a three-month first offender alcohol and drug education and counseling program. In lieu of paying fines, the court allowed Respondent to perform 11 days of CalTrans work.

5. The facts underlying Respondent's conviction were that, on or about May 21, 2010, Respondent drove an automobile in Los Angeles County with a blood alcohol level of greater than .08 percent.

6. At hearing, Respondent explained that he was driving after a party celebrating his brother's college graduation. He took full responsibility for his actions. He stated that he does not drink anymore. At the time, he did not consider the consequences of his actions. He does not currently attend alcoholics anonymous meetings, but he previously completed 20 such meetings.

7. On December 24, 2009, following a guilty plea to violating Health and Safety Code section 11350, subdivision (a) (possession of a controlled substance), a felony, the Los Angeles County Superior Court, in case number LA063968, deferred entry of judgment against Respondent.

8. The sentencing court deferred entry of judgment for three years. The court ordered Respondent to not use or possess any narcotics, dangerous or restricted drugs, or associated paraphernalia, except with a valid prescription, and to stay away from places where drug users or drug sellers congregate. The court further ordered Respondent to pay a \$150 administrative fee, and to obey all laws and orders of the court.

9. The facts underlying the deferred entry of judgment were that, on or about December 15, 2009, in Los Angeles County, Respondent possessed the following drugs without a prescription: 17 tablets of Endocet, nine tablets of Percocet, 27 tablets of Percodan, six tablets of Clinoril, and two tablets of Xanax. Respondent had loaned his automobile to his friend. The police then stopped Respondent's friend on December 15, 2009. Respondent appeared at the scene where his friend had been stopped and informed the police that he was the owner of the automobile. The police retrieved the drugs from the automobile's center console. Respondent told the police that he bought the drugs on the street for pain; he further told the police that he buys oxycodone for \$4 per pill and Xanax for \$3 per pill. The police arrested Respondent.

10. At hearing, Respondent asserted that what he told the police about the drugs was untrue. He stated that the drugs were not his, but that he told the police they were because he was trying to protect his friend. Respondent explained that he did not know why he provided more details to the police, like the prices for particular drugs. He now believes his actions were wrong, and noted that he was never close to the friend he loaned his automobile to and is no longer in contact with him.

11. Since approximately February 2008, Respondent has worked as a pharmacy technician at College Hospital, a psychiatric hospital in Cerritos, California. He works 16 hours per week on the weekends, and attends school during the weekdays. He was recently accepted to the pharmaceutical science program at the American University of Health Sciences in Signal Hill, California. He wishes to become a pharmacist and does not want his criminal history to impede his progress. Respondent wants to keep his pharmacy technician license.

12. The Board incurred \$2,832.50 in investigation and prosecution costs. The costs are reasonable. Respondent presented no evidence that the costs constitute a financial hardship, or that he otherwise has an inability to pay costs if they were assessed against him.

LEGAL CONCLUSIONS

1. Complainant bears the burden of proof. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99; *Pipkin v. Bd. of Supervisors* (1978) 82 Cal.App.3d 652.) Complainant must prove her case by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence means the evidence is "so clear as to leave no substantial doubt" and is "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Mathieu v. Norrell Corporation* (2004) 115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333].)

2. Business and Professions Code section 4300, subdivision (a) provides that "[e]very license may be suspended or revoked."

3. Business and Professions Code section 4301 states in part:

The Board shall take action against any holder of a license who is guilty of unprofessional conduct Unprofessional conduct shall include, but is not limited to, any of the following:

[¶] . . . [¶]

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

[¶] . . . [¶]

(h) The . . . use 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.

[¶] . . . [¶]

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. 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.

4. Business and Professions Code section 490, subdivision (a) provides that "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." Subdivision (c) of the same provision provides that a conviction within the meaning of this section includes a conviction following a plea of nolo contendere.

5. Business and Professions Code section 492 states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 (commencing with Section 500) of this code . . . from taking disciplinary action against a licensee . . . for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

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

For the purpose of denial, suspension, or revocation . . . 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.

7. California Code of Regulations, title 16, section 1769 states in part:

[¶] . . . [¶]

(b) When considering the suspension or revocation of . . . 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).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

8. Business and Professions Code section 125.3 states in part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department

[of Consumer Affairs] . . . upon request of the entity bringing the proceeding, the administrative law judge may direct a licensee 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.

[¶] . . . [¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case.

9. In May 2010, Respondent used alcohol in a manner that was dangerous to himself and the public. His action of driving with a blood alcohol level greater than .08 percent shows a disregard for the law and a lack of judgment. The crime evidences a present and potential unfitness to perform the functions of a licensed pharmacy technician in a manner consistent with the public health, safety, and welfare. Consequently, Respondent's crime is substantially related to a pharmacy technician's qualifications, functions, and duties. Respondent's actions underlying the conviction and the conviction itself violate Business and Professions Code section 4301, subdivisions (h) and (l), respectively.

10. Cause exists to discipline Respondent's pharmacy technician license, for unprofessional conduct, pursuant to Business and Professions Code sections 4300 and 4301, subdivision (h), for driving with a blood alcohol level greater than .08 percent, as set forth in Factual Findings 1-6, 11, and Legal Conclusions 1-3, 6, 7, and 9.

11. Cause exists to discipline Respondent's pharmacy technician license, for unprofessional conduct, pursuant to Business and Professions Code sections 490, 4300, and 4301, subdivision (l), for his misdemeanor conviction, as set forth in Factual Findings 1-6, 11, and Legal Conclusions 1-3, 4, 6, 7, and 9.

12. Respondent's possession of controlled substances in 2009 violated Health and Safety Code section 11350, subdivision (a). In accordance with Business and Professions Code section 492, the possession of such drugs violates Business and Professions Code section 4301, subdivision (j) and constitutes unprofessional conduct.

13. Cause exists to discipline Respondent's pharmacy technician license, for unprofessional conduct, pursuant to Business and Professions Code sections 4300 and 4301, subdivision (j), for possession of controlled substances that violated the Health and Safety Code, as set forth in Factual Findings 1, 2, 7-11, and Legal Conclusions 1-3, 5-7, and 12.

14. Respondent acted dishonestly in 2009, when he explained the drugs found in his automobile. If one believes Respondent's testimony, he acted deceitfully and dishonestly by telling the police that the drugs found in his car were his. If one does not, Respondent

acted deceitfully and dishonestly by testifying at the instant hearing that he lied to the police. The evidence allows for no other conclusions.

15. Pharmacy technicians must act with responsibility, honesty, and integrity in order to execute their job tasks. As Respondent's actions evidence dishonesty, they are substantially related to a pharmacy technician's qualifications, functions, and duties and provide cause to discipline his pharmacy technician license. (Bus. & Prof. Code, §§ 4300 and 4301, subd. (f).)

16. Cause exists to discipline Respondent's pharmacy technician license, for unprofessional conduct, pursuant to Business and Professions Code sections 4300 and 4301, subdivision (f), for an act involving dishonesty and deceit, as set forth in Factual Findings 1, 2, 7-11, and Legal Conclusions 1-3, 6, 7, 14, and 15.

17. Evaluating Respondent's rehabilitation derives limited support for his defense. He is pursuing a college education to better himself. (Cal. Code Regs., tit. 16, § 1769, subd. (b)(5).) He took responsibility for his conviction. (*Ibid.*) He wishes to pursue a career in pharmacy.

18. His conviction, while serious, is of a nature that could merit license discipline less severe than revocation. (Cal. Code Regs., tit. 16, § 1769, subd. (b)(1).) However, he committed the alcohol-related crime while still within the three years of the 2009 deferred entry of judgment for possession of controlled substances. (Cal. Code Regs., tit. 16, § 1769, subd. (b)(4).) He thus exhibits a disregard for the law. He is currently on criminal probation. No significant time has passed since his conviction. (Cal. Code Regs., tit. 16, § 1769, subd. (b)(3).) Furthermore, any good behavior exhibited by Respondent while on probation carries little weight. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Saliently, Respondent acted dishonestly when explaining his possession of controlled substances, as discussed in Legal Conclusion 14. A pharmacy technician must be trusted to act with honesty and integrity, and Respondent demonstrated dishonesty. It is therefore necessary to revoke Respondent's pharmacy technician license to protect the public.

19. The Board's costs are fair and reasonable. It is appropriate to award Complainant the Board's costs in this matter.

20. Cause exists to award Complainant costs, pursuant to Business and Professions Code section 125.3, as set forth in Factual Findings 1-12, and Legal Conclusions 1-19.

ORDER

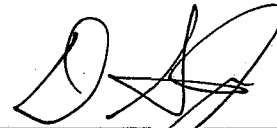
Pharmacy technician license number TCH 79928, issued to Respondent Phillip Luu is revoked. Respondent shall relinquish his technician license to the Board within 10 days of the effective date of this Decision. Respondent may not reapply or petition the Board for

reinstatement of his revoked technician license for three years from the effective date of this Decision.

A condition of reinstatement shall be that Respondent is certified as defined in Business and Professions Code section 4202, subdivision (a)(4) and provides satisfactory proof of certification to the Board.

Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$2,832.50, within fifteen (15) days of the effective date of this Decision. The Board, in its own discretion, may allow Respondent to pay the Board's costs in monthly payments that extend beyond the 15 days.

Dated: November 16, 2011



DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 3833

12 **PHILLIP LUU**
13 20840 Community St., #2
14 Winnetka, CA 91306

ACCUSATION

15 Pharmacy Technician License No. TCH 79928

16 Respondent.

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, Department of Consumer Affairs (Board).
22 2. On or about December 3, 2007, the Board issued Pharmacy Technician License No.
23 TCH 79928 to Phillip Luu (Respondent). The Pharmacy Technician License was in full force and
24 effect at all times relevant to the charges brought herein and will expire on November 30, 2011,
25 unless renewed.

26 **JURISDICTION**

- 27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

1
2 4. Section 490 provides that a board may suspend or revoke a license on the ground that
3 the licensee has been convicted of a crime substantially related to the qualifications, functions, or
4 duties of the business or profession for which the license was issued.

5 5. Section 492 states:

6 "Notwithstanding any other provision of law, successful completion of any diversion
7 program under the Penal Code, or successful completion of an alcohol and drug problem
8 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
9 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
10 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
11 division, from taking disciplinary action against a licensee or from denying a license for
12 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
13 record pertaining to an arrest.

14 "This section shall not be construed to apply to any drug diversion program operated by any
15 agency established under Division 2 (commencing with Section 500) of this code, or any
16 initiative act referred to in that division."

17 6. Section 4060 states:

18 "No person shall possess any controlled substance, except that furnished to a person upon
19 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
20 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
21 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
22 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
23 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
24 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
25 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
26 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
27 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
28 labeled with the name and address of the supplier or producer.

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

4 7. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or
5 revoked."

6 8. Section 4301 states, in pertinent part:

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

10

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

14

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

20

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

23

24 "(l) The conviction of a crime substantially related to the qualifications, functions, and
25 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
26 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
27 substances or of a violation of the statutes of this state regulating controlled substances or
28 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the

1 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
2 The board may inquire into the circumstances surrounding the commission of the crime, in order
3 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
4 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
5 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
6 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
7 of this provision. The board may take action when the time for appeal has elapsed, or the
8 judgment of conviction has been affirmed on appeal or when an order granting probation is made
9 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
10 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
11 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
12 indictment. . . ."

13 REGULATORY PROVISION

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

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

21 COST RECOVERY

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

26 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

27 11. Vicodin is the trade name for the narcotic substance hydrocodone with the non-
28 narcotic substance acetaminophen, is a Schedule III controlled substance pursuant to Health and

1 Safety Code section 11056(e)(4), and is a dangerous drug within the meaning of section 4022.

2 12. Xanax, a brand name for alprazolam, is a Schedule IV controlled substance pursuant
3 to Health and Safety Code section 11057(d)(1), and is a dangerous drug within the meaning of
4 section 4022.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Conviction of a Substantially Related Crime)**

7 13. Respondent is subject to disciplinary action under sections 490, 4300, and section
8 4301, subdivision (I), of the Code on the grounds of unprofessional conduct, in conjunction with
9 California Code of Regulations, title 16, section 1770, in that on or about July 23, 2010,
10 Respondent was convicted of a crime substantially related to the qualifications, functions or
11 duties of a registered pharmacy technician which to a substantial degree evidences his present or
12 potential unfitness to perform the functions authorized by his registration in a manner consistent
13 with the public health, safety, or welfare, as follows:

14 a. On or about July 23, 2010, after pleading nolo contendere, Respondent was convicted
15 of one misdemeanor count of violating Vehicle Code section 23152(b) [driving with a 0.08%
16 blood alcohol level or more, to wit, 0.10%] in the criminal proceeding entitled *the People of the*
17 *State of California v. Phillip Luu* (Super. Ct. Los Angeles County, 2010, No. 0VY02688). The
18 Court sentenced Respondent to 13 days in jail, placed him on 36 months of probation, ordered
19 him to complete 11 days of Cal Trans duty in lieu of fines, and ordered him to complete a 3-
20 month 1st Offender Alcohol Program.

21 b. The circumstances underlying the conviction are that on or about May 21, 2010,
22 Respondent drove a vehicle while having a tested blood alcohol level of 0.11/0.10%.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Dangerous Use of Alcoholic Beverages)**

25 14. Respondent is subject to disciplinary action under sections 4300 and 4301,
26 subdivision (h), of the Code on the grounds of unprofessional conduct, in that on or about May
27 21, 2010, Respondent used alcoholic beverages to the extent or in a manner as to be dangerous or
28 injurious to himself or others when he drove a vehicle while under the influence of alcohol.

1 Complainant refers to and by this reference incorporates the allegations set forth above in
2 paragraph 13, subparagraphs a and b, inclusive, as though set forth fully.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Illegal Possession of Controlled Substances)**

5 15. Respondent is subject to disciplinary action under sections 4300 and 4301,
6 subdivision (j), of the Code on the grounds of unprofessional conduct, conjunction with section
7 4060, in that on or about December 15, 2009, Respondent was admittedly in possession of
8 Vicodin and Xanax, controlled substances and dangerous drugs, without valid prescriptions, as
9 follows:

10 a. On or about December 24, 2009, after pleading guilty, Respondent was placed on
11 three (3) years of deferred entry of judgment for a felony violation of Health and Safety code
12 section 11350(a) [possession of a controlled substance] in the criminal proceeding entitled *The*
13 *People of the State of California v. Phillip Luu* (Super. Ct. Los Angeles County, 2009,
14 No. LA063968).

15 b. The circumstances underlying the crime is that on or about December 15, 2009,
16 Respondent was in possession of 53 Vicodin tablets, and 8 Xanax tablets, without valid
17 prescriptions.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

20 16. Respondent is subject to disciplinary action under sections 4300 and 4301,
21 subdivision (f), of the Code on the grounds of unprofessional conduct, in that Respondent
22 committed acts involving moral turpitude, dishonesty, fraud, deceit and / or corruption.

23 Complainant refers to and by this reference incorporates the allegations set forth above in
24 paragraphs 13 - 15, inclusive, as though set forth fully.

25 **PRAYER**

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

28 1. Revoking or suspending Pharmacy Technician License No. TCH 79928, issued to

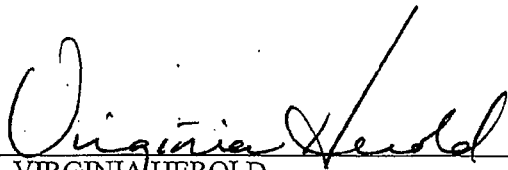
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Respondent;

2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and

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

DATED: 1/27/11



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

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