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

In the Matter of the Accusation Against:
HAO VAN PHAN
9816 Howland Drive
Temple City, CA 91780
**Pharmacy Technician License No. TCH
86000**

Respondent.

Case No. 4162

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 19, 2012, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, filed Accusation No. 4162 against Hao Van Phan (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about August 29, 2008, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 86000 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 4162 and will expire on March 31, 2014, unless renewed.

3. On or about April 3, 2012, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4162, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100,

1 is required to be reported and maintained with the Board. Respondent's address of record was
2 and is: 9816 Howland Drive, Temple City, CA 91780.

3 4. Service of the Accusation was effective as a matter of law under the provisions of
4 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
5 124.

6 5. Government Code section 11506 states, in pertinent part:

7 (c) The respondent shall be entitled to a hearing on the merits if the respondent
8 files a notice of defense, and the notice shall be deemed a specific denial of all parts
9 of the accusation not expressly admitted. Failure to file a notice of defense shall
10 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
11 may nevertheless grant a hearing.

12 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
13 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
14 4162.

15 7. California Government Code section 11520 states, in pertinent part:

16 (a) If the respondent either fails to file a notice of defense or to appear at the
17 hearing, the agency may take action based upon the respondent's express admissions
18 or upon other evidence and affidavits may be used as evidence without any notice to
19 respondent.

20 8. Pursuant to its authority under Government Code section 11520, the Board finds
21 Respondent is in default. The Board will take action without further hearing and, based on the
22 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
23 taking official notice of all the investigatory reports, exhibits and statements contained therein on
24 file at the Board offices regarding the allegations contained in Accusation No. 4162, finds that the
25 charges and allegations in Accusation No. 4162, are separately and severally, found to be true and
26 correct by clear and convincing evidence.

27 9. Taking official notice of its own internal records, pursuant to Business and
28 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
and Enforcement is \$1,940.00 as of June 13, 2012.

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1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Hao Van Phan has subjected his
3 Pharmacy Technician License No. TCH 86000 to discipline.

4 2. The agency has jurisdiction to adjudicate this case by default.

5 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
6 License based upon the following violations alleged in the Accusation, which are supported by
7 the evidence contained in the Default Decision Evidence Packet in this case:

8 a. Bus. & Prof. Code, §§ 490, 4300 and 4301(l) (Conviction of a Substantially Related
9 Crime: violation of Penal Code section 653k [possess switch-blade in motor vehicle]) and

10 b. Bus. & Prof. Code, § 4301(j) (Unlawful Possession of a Controlled Substance:
11 violation of Health and Safety Code sections 11377(a) [possession of MDMA (Ecstasy)]).

12 ORDER

13 IT IS SO ORDERED that Pharmacy Technician License No. TCH 86000, heretofore issued
14 to Respondent Hao Van Phan, is revoked.

15 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
16 written motion requesting that the Decision be vacated and stating the grounds relied on within
17 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
18 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

19 This Decision shall become effective on September 14, 2012.

20 It is so ORDERED on August 15, 2012.

21 BOARD OF PHARMACY
22 DEPARTMENT OF CONSUMER AFFAIRS
23 STATE OF CALIFORNIA

24 
25 By _____

26 STANLEY C. WEISSER

27 Board President

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DOJ Matter ID: LA2011601430
Attachment: Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 NANCY A. KAISER
Deputy Attorney General
4 State Bar No. 192083
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-5794
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:
13 **HAO VAN PHAN**
9816 Howland Drive
14 Temple City, CA 91780
15 **Pharmacy Technician License No. TCH 86000**
16 Respondent.

Case No. 4162

ACCUSATION

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Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).
2. On or about August 29, 2008, the Board issued Pharmacy Technician License No. TCH 86000 to Hao Van Phan (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2012, unless renewed.

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1 JURISDICTION

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

4 STATUTORY PROVISIONS

5 4. Section 118, subdivision (b), provides that the suspension, expiration, surrender or
6 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
7 action during the period within which the license may be renewed, restored, reissued or
8 reinstated.

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

12 6. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or
13 revoked."

14 7. Section 4301 states, in pertinent part:

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

18 ...

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

21 ...

22 "(l) The conviction of a crime substantially related to the qualifications, functions, and
23 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
24 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
25 substances or of a violation of the statutes of this state regulating controlled substances or
26 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
27 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
28 The board may inquire into the circumstances surrounding the commission of the crime, in order

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

11 REGULATORY PROVISION

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

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

19 COST RECOVERY

20 9. Section 125.3 provides that the Board may request the administrative law judge to
21 direct a licentiate found to have committed a violation or violations of the licensing act to pay a
22 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

23 CONTROLLED SUBSTANCE

24 10. Methylenedioxymethamphetamine (MDMA), having the street name of "Ecstasy," is
25 a Schedule I controlled substance as defined in Health and Safety Code sections 11054,
26 subdivision (d), and 11401. Schedule I substances have a high potential for abuse and have no
27 currently accepted medical use in treatment in the United States.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Conviction of a Substantially Related Crime)

3 11. Respondent has subjected his license to disciplinary action under sections 490, 4300
4 and 4301, subdivision (l), in conjunction with California Code of regulations, title 16, section
5 1770, on the grounds of unprofessional conduct, in that Respondent was convicted of a crime
6 substantially related to the qualifications, functions or duties of a licensee which to a substantial
7 degree evidences his present or potential unfitness to perform the functions authorized by his
8 license in a manner consistent with the public health, safety, or welfare, as follows:

9 a. On or about August 25, 2010, after pleading nolo contendere, Respondent was
10 convicted of one misdemeanor count of violating Penal Code section 653k [possess switch-blade
11 in motor vehicle] in the criminal proceeding entitled *The People of the State of California v. Hao*
12 *Van Phan* (Super. Ct. Los Angeles County, 2010, No. 0RI00177). The Court placed Respondent
13 on 24 months of probation.

14 b. The circumstances underlying the conviction are that on or about December 30, 2009,
15 Respondent admitted to possessing and carrying a gravity knife (butterfly), switchblade knife in
16 the center consul of his vehicle.

17 SECOND CAUSE FOR DISCIPLINE

18 (Unlawful Possession of a Controlled Substance)

19 12. Respondent has subjected his license to disciplinary action under section 4301,
20 subdivision (j), on the grounds of unprofessional conduct, in that Respondent violated Health and
21 Safety Code sections 11377, subdivision (a), by possessing a controlled substance, MDMA
22 (Ecstasy). On or about July 9, 2010, a deputy from the Los Angeles Sheriff Department found
23 Respondent to be in possession of one blue Ecstasy pill.

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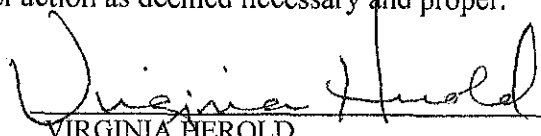
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PRAYER

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

1. Revoking or suspending Pharmacy Technician License No. TCH 86000, issued to Hao Van Phan;
2. Ordering Hao Van Phan 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: 3/19/12



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

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