

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

In the Matter of the Accusation Against:

DENNIS QUOC NGUYEN HO
1146 Nakomo Drive
Santa Ana, CA 92704

Pharmacy Technician Registration License No.
TCH 86377

Respondent.

Case No. 4219

OAH No. 2012061135

DECISION AND ORDER

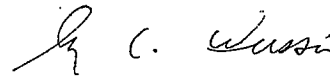
The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on August 21, 2013.

It is so ORDERED on July 22, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
Deputy Attorney General
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Attorneys for Complainant

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10 **DEPARTMENT OF CONSUMER AFFAIRS**
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11 In the Matter of the Accusation Against:

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14 **Santa Ana, CA 92704**

OAH No. 2012061135

15 **Pharmacy Technician Registration No. TCH**
86377

STIPULATED SURRENDER OF
LICENSE AND ORDER

16 Respondent.

17
18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
20 proceeding that the following matters are true:

21 PARTIES

22 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
23 She brought this action solely in her official capacity and is represented in this matter by Kamala
24 D. Harris, Attorney General of the State of California, by Desiree I. Kellogg, Deputy Attorney
25 General.

26 2. Dennis Quoc Nguyen Ho (Respondent) is representing himself in this proceeding and
27 has chosen not to exercise his right to be represented by counsel.
28

1 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
2 Respondent's license history with the Board of Pharmacy.

3 2. Respondent shall lose all rights and privileges as a pharmacy technician in California
4 as of the effective date of the Board's Decision and Order.

5 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
6 issued, his wall certificate on or before the effective date of the Decision and Order.

7 4. If he ever applies for licensure or petitions for reinstatement in the State of California,
8 the Board shall treat it as a new application for licensure. Respondent shall satisfy all
9 requirements applicable to that license as of the date the application is submitted to the Board,
10 including, but not limited to certification by a nationally recognized body prior to the issuance of
11 a new license. Respondent is required to report this surrender as disciplinary action. Respondent
12 stipulates that should he apply for any license from the Board on or after the effective date of this
13 decision, all of the charges and allegations contained in First Amended Accusation No. 4219 shall
14 be deemed to be true, correct and admitted by Respondent when the Board determines whether to
15 grant or deny the application or petition.

16 5. Respondent shall pay the agency its costs of investigation and enforcement in the
17 amount of \$4,067.50 prior to issuance of a new or reinstated license.

18 6. If Respondent should ever apply or reapply for a new license or certification, or
19 petition for reinstatement of a license, by any other health care licensing agency in the State of
20 California, all of the charges and allegations contained in First Amended Accusation, No. 4219
21 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement
22 of Issues or any other proceeding seeking to deny or restrict licensure.

23 7. Respondent shall not apply for licensure or petition for reinstatement for three (3)
24 years from the effective date of the Board of Pharmacy's Decision and Order.

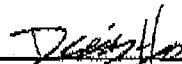
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ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 5-13-13

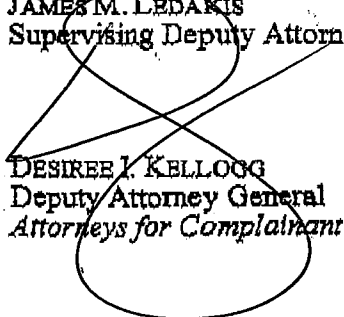

DENNIS QUOC NGUYEN HO
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: 5/15/13

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General


DESIREE K. KELLOGG
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 4219

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2 JAMES M. LEDAKIS
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11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4219

13 **DENNIS QUOC NGUYEN HO**
14 **1146 Nakomo Drive**
Santa Ana, CA 92704

FIRST AMENDED
ACCUSATION

15 **Pharmacy Technician Registration No. TCH 86377**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about September 10, 2008, the Board of Pharmacy issued Pharmacy
23 Technician Registration Number TCH 86377 to Dennis Quoc Nguyen Ho (Respondent). The
24 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
25 brought herein and will expire on March 31, 2014, unless renewed.
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27
28

JURISDICTION

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2 3. This First Amended Accusation is brought before the Board of Pharmacy (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code (Code) unless otherwise indicated.

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

9 5. Section 4300, subdivision (a), of the Code states that every license issued may be
10 suspended or revoked.

STATUTORY PROVISIONS

11
12 6. Section 480 of the Code states:

13 (a) A board may deny a license regulated by this code on the grounds
14 that the applicant has one of the following:

15 (1) Been convicted of a crime. A conviction within the meaning of
16 this section means a plea or verdict of guilty or a conviction following a plea of
17 nolo contendere. Any action that a board is permitted to take following the
18 establishment of a conviction may be taken when the time for appeal has elapsed,
19 or the judgment of conviction has been affirmed on appeal, or when an order
20 granting probation is made suspending the imposition of sentence, irrespective of
21 a subsequent order under the provisions of Section 1203.4 of the Penal Code.

22
23 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
24 revoke a license on the ground that the licensee has been convicted of a crime substantially
25 related to the qualifications, functions, or duties of the business or profession for which the
26 license was issued.

27 8. Section 493 of the Code states:

28 Notwithstanding any other provision of law, in a proceeding conducted by
a board within the department pursuant to law to deny an application for a license
or to suspend or revoke a license or otherwise take disciplinary action against a
person who holds a 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

1 conclusive evidence of the fact that the conviction occurred, but only of that fact,
2 and the board may inquire into the circumstances surrounding the commission of
3 the crime in order to fix the degree of discipline or to determine if the conviction
4 is substantially related to the qualifications, functions, and duties of the licensee in
5 question.

6 As used in this section, 'license' includes 'certificate,' 'permit,'
7 'authority,' and 'registration.'

8 9. Section 4022 of the Code states

9 "Dangerous drug" or "dangerous device" means any drug or device unsafe
10 for self-use in humans or animals, and includes the following:

11 (a) Any drug that bears the legend: "Caution: federal law prohibits
12 dispensing without prescription," "Rx only," or words of similar import.

13 (b) Any device that bears the statement: "Caution: federal law restricts
14 this device to sale by or on the order of a _____," "Rx only," or words of
15 similar import, the blank to be filled in with the designation of the practitioner
16 licensed to use or order use of the device.

17 (c) Any other drug or device that by federal or state law can be
18 lawfully dispensed only on prescription or furnished pursuant to Section 4006.

19 10. Section 4060 of the Code states:

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

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

11. 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

1 misrepresentation or issued by mistake. Unprofessional conduct shall include, but
2 is not limited to, any of the following:

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

5 (l) The conviction of a crime substantially related to the
6 qualifications, functions, and duties of a licensee under this chapter. The record
7 of conviction of a violation of Chapter 13 (commencing with Section 801) of Title
8 21 of the United States Code regulating controlled substances or of a violation of
9 the statutes of this state regulating controlled substances or dangerous drugs shall
10 be conclusive evidence of unprofessional conduct. In all other cases, the record
11 of conviction shall be conclusive evidence only of the fact that the conviction
12 occurred. The board may inquire into the circumstances surrounding the
13 commission of the crime, in order to fix the degree of discipline or, in the case of
14 a conviction not involving controlled substances or dangerous drugs, to determine
15 if the conviction is of an offense substantially related to the qualifications,
16 functions, and duties of a licensee under this chapter. A plea or verdict of guilty
17 or a conviction following a plea of nolo contendere is deemed to be a conviction
18 within the meaning of this provision. The board may take action when the time
19 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal
20 or when an order granting probation is made suspending the imposition of
21 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal
22 Code allowing the person to withdraw his or her plea of guilty and to enter a plea
23 of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
24 information, or indictment.

25 (o) Violating or attempting to violate, directly or indirectly, or
26 assisting in or abetting the violation of or conspiring to violate any provision or
27 term of this chapter or of the applicable federal and state laws and regulations
28 governing pharmacy, including regulations established by the board or by any
other state or federal regulatory agency.

 (p) Actions or conduct that would have warranted denial of a license.

12. Health & Safety Code section 11357, subdivision (c) states:

 Except as authorized by law, every person who possesses more than 28.5
grams of Marijuana, other than concentrated cannabis, shall be punished by
imprisonment in a county jail for a period of not more than six months or by a
fine of not more than five hundred dollars (\$500), or by both such fine and
imprisonment.

1 13. Health & Safety Code section 11360(a) states:

2 Except as otherwise provided by this section or as authorized by law, every
3 person who transports, imports into this state, sells, furnishes, administers, or gives
4 away, or offers to transport, import into this state, sell, furnish, administer, or give
5 away, or attempts to import into this state or transport any marijuana shall be
6 punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal
7 code for a period of two, three or four years.

8 REGULATORY PROVISIONS

9 14. California Code of Regulations, title 16, section 1769, states:

10

11 (b) When considering the suspension or revocation of a facility or a
12 personal license on the ground that the licensee or the registrant has been
13 convicted of a crime, the board, in evaluating the rehabilitation of such person and
14 his present eligibility for a license will consider the following criteria:

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

16 (2) Total criminal record.

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

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

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

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

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

COST RECOVERY

16. Section 125.3 of the Code states, in pertinent part, that the Board may request the
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.

1 DRUGS

2 17. Marijuana is a dangerous drug pursuant to section 4022 and is a Schedule I
3 controlled substance as designated by Health and Safety Code section 11054, subdivision (d)(13).

4 18. Hash is a dangerous drug pursuant to section 4022 and is a Schedule I controlled
5 substance as designated by Health and Safety Code section 11054(d)(20).

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(November 2, 2011 Conviction for Possession of More Than 28.5 Grams**
8 **of Marijuana on March 20, 2011)**

9 19. Respondent subjected his license to discipline under sections 490 and 4301,
10 subdivision (l) of the Code in that Respondent was convicted of a crime that is substantially
11 related to the qualifications, functions, and duties of a licensed pharmacy technician. The
12 circumstances are as follows:

13 a. On or about November 2, 2011, in a criminal proceeding entitled *The People of*
14 *the State of California vs. Dennis Quoc Nguyen Ho*, in Orange County Superior Court, Case
15 Number 11WF1487, Respondent was convicted on his plea of guilty to violating Health and
16 Safety Code section 11357 subdivision (c), possession of more than 28.5 grams of Marijuana, a
17 misdemeanor. As part of his plea agreement, Respondent admitted to willfully and unlawfully
18 possessing more than 28.5 grams of Marijuana.

19 b. As a result of the conviction, on or about November 2, 2011, Respondent
20 was sentenced to three years informal probation, and ordered to serve four days in Orange
21 County Jail with credit for two days actually served and another two days for good conduct, and
22 complete 16 days of community service with the California Department of Transportation.
23 Respondent was also ordered to pay \$2,000.00 to the Victim Witness Emergency Fund, \$200.00
24 in fines, and \$60.00 in fees. On December 5, 2011, the criminal court revoked Respondent's
25 probation for failing to report to Collections and failing to pay the full amount of the
26 aforementioned fees and it issued a bench warrant for defendant. On December 12, 2011,
27 Respondent admitted to violating his probation at his probation violation arraignment hearing.
28

1 The Court found Respondent to be in violation of his probation and ordered him to serve 8 days
2 in Orange County Jail.

3 c. The facts that led to the conviction are that on or about March 19, 2011, an
4 Orange County Sheriff's Deputy responded to a disturbance call in the City of Midway,
5 California. Upon arrival, the Officer saw Respondent exiting the driver's side of a vehicle. As the
6 Officer walked past the driver's side door that was about to close, he smelled a strong odor of
7 Marijuana coming from inside the vehicle. The Officer instructed Respondent to stop and asked
8 why the smell of Marijuana emanated from inside the vehicle. Respondent admitted to
9 possessing Marijuana on his person and inside the vehicle and consented to a vehicular search.
10 The search yielded one marijuana cigarette in Respondent's front pant pocket, a small plastic
11 container with 0.4 grams of Marijuana inside and a glass smoking pipe inside the center console
12 and a plastic baggie containing 10.4 grams of Marijuana, a plastic container with approximately
13 5.7 grams of Hash and a scale with Marijuana residue in Respondent's backpack. After another
14 deputy discovered a text message on Respondent's telephone which indicated Respondent was
15 illegally dealing drugs, Respondent admitted to illegally selling Marijuana to individuals who did
16 not have a doctor's recommendation for medical Marijuana.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Violation of Drug Laws)**

19 20. Respondent is subject to disciplinary action under section 4301, subdivision (j) of
20 the Code in that Respondent violated Code section 4060, Health & Safety Code section 11360,
21 Health & Safety Code section 11357 subdivision (c) and other statutes of the State of California
22 regulating controlled substances and dangerous drugs, as detailed in paragraph 19, above.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct - Violating Federal & State Laws
25 & Regulations Governing Pharmacy)**

26 21. Respondent is subject to disciplinary action under section 4301(o) of the Code in
27 that Respondent illegally possessed more than 28.5 grams of Marijuana and approximately 5.7
28

1 grams of Hash, illegally sold Marijuana and knowingly violated the Board of Pharmacy Law and
2 Regulations (i.e., California Code of Regulations, Title 16, Section 1700, et seq.), and the
3 California Uniform Controlled Substances Act (Health and Safety Code 11000, et seq.); as
4 detailed in paragraph 19, above.

5 **FOURTH CAUSE FOR DISCIPLINE**

6 **(Conduct That Would Have Warranted Denial of a License)**

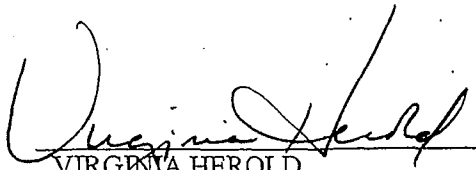
7 22. Respondent is subject to disciplinary action under section 4301, subdivision (p) of
8 the Code in that Respondent was convicted of possession of more than 28.5 grams of Marijuana,
9 conduct which would have warranted the denial of a pharmacy technician registration under
10 section 480, subdivision (a)(1) of the Code, as detailed in paragraph 19, above.

11 **PRAYER**

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

- 14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 86377,
15 issued to Dennis Quoc Nguyen Ho;
- 16 2. Ordering Dennis Quoc Nguyen Ho to pay the Board of Pharmacy the reasonable
17 costs of the investigation and enforcement of this case, pursuant to Business and Professions
18 Code section 125.3;
- 19 3. Taking such other and further action as deemed necessary and proper.
- 20

21
22 DATED: 5/3/13


23 VIRGINIA HEROLD
24 Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 Complainant

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