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

In the Matter of the Accusation Against:

JOHN HUY TONG
8105 18th Street
Westminster, CA 92683

**Pharmacy Technician Registration
No. TCH 82932**

Respondent.

Case No. 4583

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about July 22, 2013, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4583 against John Huy Tong (Respondent) before the Board of Pharmacy. (The Accusation is attached as Exhibit A.)

2. On or about July 22, 2008, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 82932 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4583 and will expire on June 30, 2014, unless renewed.

3. On or about July 30, 2013, Respondent was served by Certified and First Class Mail copies of Accusation No. 4583, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

1 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
2 and California Code of Regulations, title 16, section 1704, is required to be reported and
3 maintained with the Board. Respondent's address of record was and is:

4 8105 18th Street
5 Westminster, CA 92683

6 4. Service of the Accusation was effective as a matter of law under the provisions of
7 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
8 124.

9 5. On or about August 2, 2013, the Domestic Return Receipt for the aforementioned
10 documents served by Certified Mail was signed acknowledging receipt.

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

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

17 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
18 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
19 4583.

20 8. California Government Code section 11520 states, in pertinent part:

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

25 9. Pursuant to its authority under Government Code section 11520, the Board finds
26 Respondent is in default. The Board will take action without further hearing and, based on the
27 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
28 taking official notice of all the investigatory reports, exhibits and statements contained therein on
file at the Board's offices regarding the allegations contained in Accusation No. 4583, finds that
the charges and allegations in Accusation No. 4583, are separately and severally, found to be true
and correct by clear and convincing evidence.

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ORDER

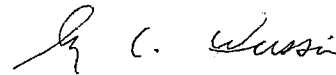
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 82932, heretofore issued to Respondent John Huy Tong, is revoked.

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

This Decision shall become effective on November 22, 2013.

It is so ORDERED ON October 23, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STAN C. WEISSER
Board President

Exhibit A

Accusation

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Attorneys for Complainant

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10 **BEFORE THE**
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**
12

13 In the Matter of the Accusation Against:

Case No. 4583

14 **JOHN HUY TONG**
8105 18th Street
15 Westminster, CA 92683

A C C U S A T I O N

16 **Pharmacy Technician Registration**
No. TCH 82932

17
18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

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

24 2. On or about July 22, 2008, the Board of Pharmacy issued Pharmacy Technician
25 Registration Number TCH 82932 to John Huy Tong (Respondent). The Pharmacy Technician
26 Registration was in full force and effect at all times relevant to the charges brought herein and
27 will expire on June 30, 2014, unless renewed.

28 ///

1 to fix the degree of discipline or to determine if the conviction is substantially related
2 to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "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
8 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
9 not limited to, any of the following:

10

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

16

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

. . . .

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,

1 the board, in evaluating the rehabilitation of such person and his present eligibility for
2 a license will consider the following criteria:

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

4 (2) Total criminal record.

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

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

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

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

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

13 COSTS

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

20 FIRST CAUSE FOR DISCIPLINE

21 (August 18, 2008 Criminal Conviction for Aggravated Assault on August 10, 2008)

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

25 a. On or about August 18, 2008, in a criminal proceeding entitled *People of the*
26 *State of California v. John Huy Tong*, in Orange County Superior Court, case number 08WF1638,
27 Respondent was convicted on his plea of guilty to violating Penal Code section 245, subdivision
28 (a)(1), aggravated assault, reduced from a felony to a misdemeanor at the request of the *People*.

1 (Count 2), misdemeanors. Respondent admitted, and the court found true the special allegation
2 that Respondent's BAC was .20 percent or more, pursuant to Vehicle Code section 23538,
3 subdivision (b)(2). The court certified Respondent's BAC as .22 percent.

4 b. As a result of the convictions, on or about November 1, 2012, the court stayed
5 sentence on Count 2. As to Count 1, Respondent was granted three years informal probation, and
6 ordered to complete a nine-month Level 2 First Offender Alcohol Program and a MADD Victim
7 Impact Panel session. Respondent was further ordered to pay fees, fines and restitution, and
8 comply with standard DUI probation terms.

9 c. The facts that led to the convictions are that on or about the evening of May 17,
10 2012, a patrol officer with the Huntington Beach Police Department was dispatched to investigate
11 a citizen's report of a possible drunk driver. Upon arrival at the scene, the officer was flagged
12 down by the witness and directed to a vehicle driven by Respondent. After making a traffic stop,
13 the officer observed that Respondent had the objective symptoms of impairment: slow, slurred
14 speech, bloodshot and watery eyes, and an overwhelming odor of an alcoholic beverage emitting
15 from Respondent's person and breath. The officer had Respondent exit his vehicle; Respondent
16 walked with an unsteady gait. Respondent performed poorly on a series of field sobriety tests and
17 he was arrested for driving under the influence of alcohol. During booking, Respondent provided
18 a sample of blood.

19 THIRD CAUSE FOR DISCIPLINE

20 (Dangerous Use of Alcohol)

21 15. Respondent has subjected his registration to disciplinary action under section 4301,
22 subdivision (h) of the Code for unprofessional conduct in that on or about May 17, 2012,
23 Respondent operated a motor vehicle while substantially impaired by alcoholic beverages, as
24 detailed in paragraph 14, above.

25 DISCIPLINARY CONSIDERATIONS

26 16. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
27 to California Code of Regulations, title 16, section 1769, Complainant alleges that on or about
28 August 30, 2006, in a criminal proceeding entitled *People of the State of California v. John Huy*

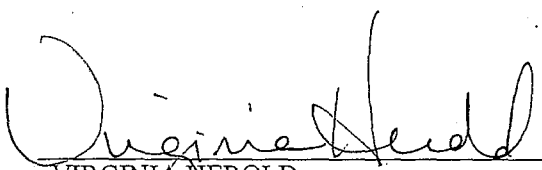
1 Tong, in Los Angeles County Superior Court, case number D280043, Respondent was convicted
2 on his plea of nolo contendere to violating Penal Code section 647, subdivision (f), public
3 intoxication. Respondent was sentenced to two days in the county jail, with credit for two days.
4 and granted one year summary probation, ordered to pay fees and fines, and to comply with
5 probation terms.

6 **PRAYER**

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

- 9 1. Revoking or suspending Pharmacy Technician Registration Number TCH 82932,
10 issued to John Huy Tong;
- 11 2. Ordering John Huy Tong to pay the Board of Pharmacy the reasonable costs of the
12 investigation and enforcement of this case, pursuant to Business and Professions Code section
13 125.3;
- 14 3. Taking such other and further action as deemed necessary and proper.

15
16
17 DATED: 7/22/13


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

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