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

In the Matter of the Accusation Against:

**DON TUONG DANG  
258 Manzanita Drive  
Oceanside, CA 92057  
Pharmacy Technician Registration No. TCH  
110497**

Respondent.

Case No. 5268

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about January 23, 2015, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5268 against Don Tuong Dang (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

1           2.     On or about March 18, 2011, the Board of Pharmacy (Board) issued Pharmacy  
2 Technician Registration No. TCH 110497 to Respondent. The Pharmacy Technician Registration  
3 expired on September 30, 2014, and has not been renewed.

4           3.     On or about February 4, 2015, Respondent was served by Certified and First Class  
5 Mail copies of the Accusation No. 5268, Statement to Respondent, Notice of Defense, Request  
6 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and  
7 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code  
8 section 4100, is required to be reported and maintained with the Board. Respondent's address of  
9 record was and is: 258 Manzanita Drive, Oceanside, CA 92057.

10          4.     Service of the Accusation was effective as a matter of law under the provisions of  
11 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
12 124.

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

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

19          6.     Respondent failed to file a Notice of Defense within 15 days after service upon him  
20 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
21 5268.

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

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

27          8.     Pursuant to its authority under Government Code section 11520, the Board finds  
28 Respondent is in default. The Board will take action without further hearing and, based on the  
relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
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. 5268, finds that

1 the charges and allegations in Accusation No. 5268, are separately and severally, found to be true  
2 and correct by clear and convincing evidence.

3 9. Taking official notice of its own internal records, pursuant to Business and  
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for investigation  
5 and enforcement for the Board is \$535.50 and for the Attorney General's Office \$1,875.00 for  
6 total costs of \$2,410.50 as of March 17, 2015.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Don Tuong Dang has subjected  
9 his Pharmacy Technician Registration No. TCH 110497 to discipline.

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

11 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician  
12 Registration based upon the following violations alleged in the Accusation which are supported  
13 by the evidence contained in the Default Decision Evidence Packet in this case.:

14 a. Business and Professions Code sections 490 and 4301(l) authorize revocation for  
15 Respondent's March 28, 2013 criminal conviction for grand theft by employee.

16 b. Business and Professions Code section 4301(o) authorizes revocation for  
17 Respondent's unprofessional conduct when he possessed a controlled substance without a  
18 prescription between June of 2013 and January of 2014.

19 c. Business and Professions Code section 4301(j) authorizes revocation for  
20 Respondent's unprofessional conduct when he obtained a controlled substance by fraud, deceit or  
21 subterfuge when he stole controlled substances from the pharmacy that employed him.

22 d. Business and Professions Code section 4301(h) authorizes revocation for  
23 Respondent's unprofessional conduct when he administered a controlled substance in a manner  
24 dangerous or injurious to self or others.

25 e. Business and Professions Code section 4301(f) authorizes revocation for  
26 Respondent's commission of an act involving dishonesty when he stole controlled substances  
27 from the pharmacy that employed him.

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ORDER

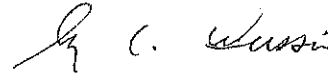
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 110497, heretofore issued to Respondent Don Tuong Dang, is revoked.

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 May 8, 2015.

It is so ORDERED on April 8, 2015.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STAN C. WEISSER  
Board President

71032331.DOC  
DOJ Matter ID:SD2014707725

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Senior Assistant Attorney General  
3 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
4 State Bar No. 132645  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2105  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5268

12 **DON TUONG DANG**  
13 **258 Manzanita Drive**  
14 **Oceanside, CA 92057**

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

15 **Pharmacy Technician Registration**  
**No. TCH 110497**

16 Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about March 18, 2011, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 110497 to Don Tuong Dang (Respondent). The Pharmacy Technician  
25 Registration was in full force and effect at all times relevant to the charges brought herein,  
26 expired on September 30, 2014, and has not been renewed.

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**JURISDICTION**

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

4. Section 4300(a) of the Code states that “[e]very license issued may be suspended or revoked.”

5. Section 4300.1 of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

**STATUTORY AND REGULATORY PROVISIONS**

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

.....

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

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

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1           8.    Section 492 of the Code states:

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

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

14           9.    Section 493 of the Code states:

15                   Notwithstanding any other provision of law, in a proceeding conducted by a  
16                   board within the department pursuant to law to deny an application for a license or  
17                   to suspend or revoke a license or otherwise take disciplinary action against a  
18                   person who holds a license, upon the ground that the applicant or the licensee has  
19                   been convicted of a crime substantially related to the qualifications, functions, and  
20                   duties of the licensee in question, the record of conviction of the crime shall be  
21                   conclusive evidence of the fact that the conviction occurred, but only of that fact,  
22                   and the board may inquire into the circumstances surrounding the commission of  
23                   the crime in order to fix the degree of discipline or to determine if the conviction is  
24                   substantially related to the qualifications, functions, and duties of the licensee in  
25                   question.

26                   As used in this section, "license" includes "certificate," "permit,"  
27                   "authority," and "registration."

28           10.   Section 4060 of the Code states:

                  No person shall possess any controlled substance, except that furnished to a  
                  person upon the prescription of a physician, dentist, podiatrist, optometrist,  
                  veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished  
                  pursuant to a drug order issued by a certified nurse-midwife pursuant to Section  
                  2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant  
                  pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a  
                  pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)  
                  of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. 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.



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

4 11. Section 4301 of the Code states:

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

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

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

17 (j) The violation of any of the statutes of this state or of the United States  
18 regulating controlled substances and dangerous drugs.

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

1 (o) Violating or attempting to violate, directly or indirectly, or assisting in  
2 or abetting the violation of or conspiring to violate any provision or term of this  
chapter or of the applicable federal and state laws and regulations governing  
pharmacy, including regulations established by the board

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5 12. Title 16, California Code of Regulations, section 1769, states:

6  
7 (b) When considering the suspension or revocation of a facility or a personal  
8 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:

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

10 (2) Total criminal record.

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

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

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

15 13. Title 16, California Code of Regulations, section 1770, states:

16 For the purpose of denial, suspension, or revocation of a personal or facility  
17 license pursuant to Division 1.5 (commencing with Section 475) of the Business and  
18 Professions Code, a crime or act shall be considered substantially related to the  
19 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.

20 14. Health and Safety Code section 11173 states in pertinent part that no person shall  
21 obtain a controlled substance by fraud, deceit, subterfuge or concealment of a material fact.

22 **COST RECOVERY**

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

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(March 28, 2013 Criminal Conviction for Grand Theft by Employee**  
3 **Between June of 2013 and January of 2014)**

4 16. Respondent is subject to disciplinary action under sections 490 and 4301,  
5 subdivisions (l) of the Code in that he was convicted of a crime substantially related to the  
6 qualifications, functions and duties of a pharmacy technician. The circumstances are as follows:  
7

8 17. On or about March 28, 2013, in a criminal proceeding entitled *People of the State of*  
9 *California vs. Don Dang*, in the Superior Court of California, County of San Diego, North  
10 County Division, in case number SCN315276, Respondent was convicted, on his plea of guilty,  
11 of violating Penal Code section 487(a) (grand theft over \$950), a lesser included offense of Penal  
12 Code section 487(b)(3) (grand theft by employee), a felony. As a result of a plea bargain, counts  
13 for violating Penal Code sections 508 (fraudulent misappropriation by employee), 484 (petty  
14 theft), and Business and Professions Code section 4060 (possession of controlled substances  
15 without a prescription), were dismissed.

16 18. As a result of the conviction, the Court placed Respondent on three years formal  
17 probation, ordered him to serve four days in the county jail, perform 20 days of community  
18 service at the rate of one day per week, obey all laws, not possess any firearm, provide DNA  
19 samples, provide true name and date of birth if contacted by law enforcement, submit to search  
20 and seizure, participate in treatment, therapy and/or counseling, attend and successfully complete  
21 a substance abuse cognitive therapy program as directed by probation officer, attend self-help  
22 meetings, complete a residential treatment program as directed by probation officer, not use or  
23 possess alcohol, not use or possess controlled substances without a valid prescription, pay various  
24 fines and fees, pay restitution to Target Corporation in the amount of \$3,500, obtain employment  
25 approval from probation officer, and not work in the capacity of a pharmacy technician.

26 19. The circumstances that led to the conviction are that on or about January 16, 2013,  
27 C.C., with Target Healthcare Corporation Security, through their normal store analysis process,  
28 identified a possible loss of 6,100 hydrocodone/apap (HPAP) at Target T-303. The Lead Loss

1 Prevention Investigator (A.G.) and the Pharmacy Business Manager (H.W.) were notified and an  
2 investigation was initiated.

3 20. On January 29, 2013, A.G. was watching real time video when he observed  
4 Respondent, who was a pharmacy technician employed by Target, concealing Tramadol and then  
5 leaving the pharmacy with the Tramadol. When Respondent left the pharmacy, he was pulled  
6 aside and questioned by A.G. Respondent produced 15 Tramadol from his pocket and admitted  
7 to stealing about 30 HPAP tablets daily. Respondent told A.G. that he was "horribly" addicted to  
8 HPAP and that he was consuming approximately 30 tablets of HPAP daily. Respondent further  
9 told A.G. that he was trying to decrease his addiction and was attempting to move from HPAP to  
10 Tramadol, and that on this particular day he stole 15 Tramadol. Respondent admitted to stealing  
11 an average of 30 tablets daily starting in June of 2012, and told A.G. that no one else in the  
12 pharmacy assisted him with this. Respondent further told A.G. that he did not sell any of the  
13 tables, but consumed them himself. On January 29, 2013, Respondent wrote an Admission  
14 Statement and left the document in possession of Target T-303. Target staff notified Oceanside  
15 Police Department of the thefts and Respondent was arrested on the same day.

16 21. Respondent admitted to Oceanside Police Department Officers that he stole over  
17 6,000 HPAP pills and some tramadol pills between June of 2012 and January 29, 2013.  
18 Respondent also admitted to Officers that he personally consumed up to 30 tablets of HPAP daily  
19 due to his addiction.

#### 20 SECOND CAUSE FOR DISCIPLINE

##### 21 **(Unprofessional Conduct - Possession of a Controlled Substance Without a Prescription)**

22 22. Respondent is subject to disciplinary action under section 4301(o) in that between or  
23 about June of 2013 and January of 2014, Respondent possessed controlled substances without a  
24 prescription in violation of section 4060, when he stole the controlled substances  
25 hydrocodone/acetaminophen and tramadol from the pharmacy that employed him, as is more  
26 fully detailed at paragraphs 16-21, above, which are incorporated here by reference.

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**THIRD CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct - Obtaining a Controlled Substance by Fraud, Deceit or Subterfuge)**

23. Respondent is subject to disciplinary action under section 4301(j) for obtaining controlled substances by fraud, deceit, or subterfuge in violation of Health and Safety Code section 11173, when he stole the controlled substances hydrocodone/acetaminophen and tramadol from the pharmacy that employed him, as is more fully detailed at paragraphs 16-21, above, which are incorporated here by reference.

**FOURTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct – Administering of Controlled Substances in a Manner Dangerous or Injurious to Self or Others)**

24. Respondent is subject to disciplinary action under section 4301, subdivision (h), in that between or about June of 2013 and January of 2014, he administered to himself hydrocodone/acetaminophen and tramadol in a manner dangerous or injurious to himself or others, as is more fully detailed at paragraphs 16-21, above, which are incorporated here by reference.

**FIFTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct – Commission of an Act Involving Dishonesty)**

25. Respondent is subject to disciplinary action under section 4301, subdivision (f), in that between or about June of 2013 and January of 2014, he committed acts of dishonesty when he stole the controlled substances hydrocodone/acetaminophen and tramadol from the pharmacy that employed him, as is more fully detailed at paragraphs 16-21, above, which are incorporated here by reference.

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**PRAYER**

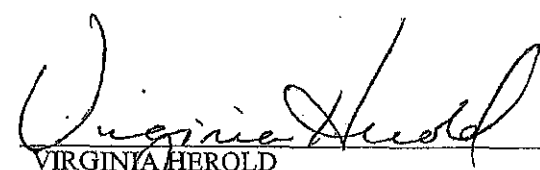
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 110497, issued to Don Tuong Dang;

2. Ordering Don Tuong Dang 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;

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

DATED: 1/23/15



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

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