

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 State Bar No. 101336  
AMANDA DODDS  
4 Senior Legal Analyst  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2141  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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

11  
12 In the Matter of the Accusation Against: Case No. 4800  
13 **KLEIST PHAM** **ACCUSATION**  
14 **10672 Mast Avenue**  
**Garden Grove, CA 92843**  
15 **Pharmacy Technician Registration**  
16 **No. TCH 61136**  
17 Respondent.

18  
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 February 10, 2005, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 61136 to Kleist Pham (Respondent). The Pharmacy Technician  
25 Registration was in full force and effect at all times relevant to the charges brought herein and  
26 will expire on April 30, 2014, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a) of the Code states "Every license issued may be  
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued license  
9 by operation of law or by order or decision of the board or a court of law, the  
10 placement of a license on a retired status, or the voluntary surrender of a license by a  
11 licensee shall not deprive the board of jurisdiction to commence or proceed with any  
12 investigation of, or action or disciplinary proceeding against, the licensee or to render  
13 a decision suspending or revoking the license.

14 **STATUTORY PROVISIONS**

15 6. Section 482 of the Code states:

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

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

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

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

26 8. Section 493 of the Code states:

27 Notwithstanding any other provision of law, in a proceeding conducted by a  
28 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 conclusive  
evidence of the fact that the conviction occurred, but only of that fact, and the board  
may inquire into the circumstances surrounding the commission of the crime in order

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

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### 20 REGULATORY PROVISIONS

21 10. California Code of Regulations, title 16, section 1769, states:

22 . . . .

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

- 27 (1) Nature and severity of the act(s) or offense(s).
- 28 (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).

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

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

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

5 For the purpose of denial, suspension, or revocation of a personal or facility  
6 license pursuant to Division 1.5 (commencing with Section 475) of the Business and  
7 Professions Code, a crime or act shall be considered substantially related to the  
8 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.

9 **COSTS**

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

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(May 27, 2010 Criminal Conviction for Resisting a Police Officer on January 22, 2009)**

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

21 a. On or about May 27, 2010, in a criminal proceeding entitled *People of the State*  
22 *of California v. Kleist Bach Pham*, in Orange County Superior Court, case number 09HM01746,  
23 Respondent was convicted on his plea of guilty to violating Penal Code section 148, subdivision  
24 (a)(1), resisting and obstructing an officer, a misdemeanor.

25 b. As a result of the conviction, on or about May 27, 2010, Respondent was  
26 sentenced to serve 18 days in the Orange County Jail, with credit for 18 days, and granted three  
27 years summary probation. Respondent was further ordered to complete 12 days in the  
28 CalTrans/Physical Labor Program, pay fees, fines, and restitution.

1 c. The facts that led to the conviction are that on or about the evening of January  
2 22, 2009, the Newport Beach Police Department responded to a traffic collision. A witness stated  
3 he was stopped at a red light behind a vehicle driven by Respondent. As the light turned green,  
4 both vehicles accelerated, then Respondent suddenly slammed on his brakes. The witness stated  
5 he could not avoid colliding with Respondent. Respondent told the officers that he braked  
6 because an animal ran into the roadway, but he became irate when asked to describe the animal or  
7 give further details of the collision. Respondent complained of neck pain and asked for an  
8 ambulance, however, when the ambulance arrived he refused treatment. Respondent got back  
9 into his vehicle and fled the scene; officers attempted to locate him with negative results.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(May 27, 2010 Criminal Conviction for Filing a False Emergency Report on July 17, 2009)**

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

15 a. On or about May 27, 2010, in a criminal proceeding entitled *People of the State*  
16 *of California v. Kleist Bach Pham*, in Orange County Superior Court, case number 09WM08892,  
17 Respondent was convicted on his plea of guilty to violating Penal Code section 148.3, subdivision  
18 (a), filing a false report of an emergency, a misdemeanor.

19 b. As a result of the conviction, on or about May 27, 2010, the court suspended  
20 sentence and Respondent was ordered to pay fees and fines.

21 c. The facts that led to the conviction are that on or about the morning of July 17,  
22 2009, officers from the Garden Grove Police Department responded to Respondent's emergency  
23 call stating that his brother was threatening him with a knife. The officers established that the  
24 brother had not threatened Respondent with a knife, and that Respondent had been arrested for  
25 the same offense eleven days earlier, as described in paragraph 15, below. Respondent was  
26 arrested for filing a false report of an emergency.

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1 THIRD CAUSE FOR DISCIPLINE

2 **(May 27, 2010 Criminal Conviction for Filing a False Emergency Report on July 17, 2009)**

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

6 a. On or about May 27, 2010, in a criminal proceeding entitled *People of the State*  
7 *of California v. Kleist Bach Pham*, in Orange County Superior Court, case number 09WM09314,  
8 Respondent was convicted on his plea of guilty to violating Penal Code section 148.3, subdivision  
9 (a), filing a false report of an emergency, a misdemeanor. Pursuant to a plea agreement, the  
10 court dismissed an additional count of violating Penal Code section 148, subdivision (a)(1),  
11 resisting and obstructing an officer, a misdemeanor.

12 b. As a result of the conviction, on or about May 27, 2010, the court suspended  
13 sentence and Respondent was ordered to pay fees and fines.

14 c. The facts that led to the conviction are that on or about the evening of July 6,  
15 2009, an officer from the Garden Grove Police Department responded to a hang-up 9-1-1 call.  
16 The caller, later identified as Respondent, stated that he wanted the people who lived at the back  
17 of his house hanged. Upon arrival at the residence, the officers spoke to the owner who stated he  
18 had not called 9-1-1, but he had two sons living in the rear of the house. After the owner  
19 unlocked the door for Respondent's room, they encountered Respondent who yelled at the officer  
20 to leave. While attempting to bring Respondent outside to conduct a pat down search,  
21 Respondent became uncooperative and began fighting the officer. While on the ground,  
22 Respondent kept attempting to reach into his waistband. Another officer arrived and they were  
23 able to handcuff Respondent. During questioning, Respondent stated that he called 9-1-1 because  
24 his neighbors were bugging him and he wanted them hanged or arrested.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(February 20, 2013 Criminal Conviction for Resisting a Police Officer on September 22, 2012)**

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

6 a. On or about February 20, 2013, in a criminal proceeding entitled *People of the*  
7 *State of California v. Kleist Bach Pham, aka Quoc Hung B. Pham, aka Kleist Pham, aka Quoc*  
8 *Hongb Pham*, in Orange County Superior Court, case number 12WM10068, Respondent was  
9 convicted on his plea of guilty to violating Penal Code section 148, subdivision (a)(1), resisting  
10 and obstructing an officer, a misdemeanor.

11 b. As a result of the conviction, on or about February 20, 2013, Respondent was  
12 sentenced to serve six days in the Orange County Jail, with credit for six days, and granted three  
13 years summary probation. Respondent was further ordered to submit to a Fourth Amendment  
14 waiver, pay fees and fines, and comply with probation terms.

15 c. The facts that led to the conviction are that on or about the evening of  
16 September 22, 2012, officers with the Garden Grove Police Department arrived at Respondent's  
17 residence to serve two warrants for his arrest. A family member led the officers to Respondent's  
18 bedroom in a back yard shed. Respondent was told he was under arrest for the warrants and was  
19 handcuffed. As Respondent was putting on his shoes, he became agitated and started kicking in  
20 the direction of an officer. Respondent refused to leave his bedroom and became combative. The  
21 officers struggled with Respondent; Respondent removed a flashlight from one officer's duty belt.  
22 Respondent eventually complied after one officer threw a single punch into Respondent's torso.  
23 Respondent was placed in hobbles and transported to jail.

24 **PRAYER**

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

27 1. Revoking or suspending Pharmacy Technician Registration Number TCH 61136,  
28 issued to Kleist Pham;

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2. Ordering Kleist Pham 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:

3/27/14



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

SD2013705530