

1 KAMALA D. HARRIS  
Attorney General of California  
2 THOMAS L. RINALDI  
Supervising Deputy Attorney General  
3 MORGAN W. MCCALL  
Deputy Attorney General  
4 State Bar No. 240258  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2544  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Petition to Revoke  
11 Probation Against,

Case No. 5780

12 **DAVID LEE HUYNH**  
13 **6251 Lena**  
**Woodland Hills, CA 91367**  
14 **Pharmacist License No. RPH 52876**

PETITION TO REVOKE PROBATION

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Petition to Revoke Probation 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 5, 2001, the Board of Pharmacy issued Pharmacist License  
23 Number RPH 52876 to David Lee Huynh (Respondent). The Pharmacist License will expire on  
24 October 31, 2016, if not renewed.

25 3. In a disciplinary action entitled "In the Matter of Accusation Against David Lee  
26 Huynh," Case No. 4587, the Board of Pharmacy issued a decision, effective November 9, 2015,  
27 in which Respondent's Pharmacist License was revoked. The revocation was stayed, however,  
28 and Respondent's Pharmacist License was placed on probation for a period of five (5) years with

1 certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated  
2 by reference.

### 3 JURISDICTION

4 4. This Petition to Revoke Probation is brought before the Board of Pharmacy (Board),  
5 Department of Consumer Affairs, under Condition 26 of the Decision and Order In the Matter of  
6 Accusation Against David Huynh, Case No. 4587. That Condition states as follows:

7 "If Respondent has not complied with any term or condition of probation, the Board shall  
8 have continuing jurisdiction over respondent, and probation shall automatically be extended, until  
9 all terms and conditions have been satisfied or the Board has taken other action as deemed  
10 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and  
11 to impose the penalty that was stayed.

12 "If Respondent violates probation in any respect, the Board, after giving Respondent notice  
13 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that  
14 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a  
15 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If  
16 a petition to revoke probation or an accusation is filed against respondent during probation, the  
17 board shall have continuing jurisdiction and the period of probation shall be automatically  
18 extended until the petition to revoke probation or accusation is heard and decided."

### 19 FIRST CAUSE TO REVOKE PROBATION

#### 20 (Pharmacist Recovery Program)

21 5. At all times after the effective date of Respondent's probation, Condition 1 stated:

22 "Commencing on the effective date of this decision, Respondent shall not engage in the  
23 practice of pharmacy until after he has enrolled in the Pharmacists Recovery Program ["PRP"],  
24 completed an intake and evaluation assessment by the PRP, and has been notified in writing by  
25 the Board that he has been deemed to practice pharmacy safely. After he has been deemed fit to  
26 practice pharmacy by the PRP, at all times Respondent shall successfully participate in, and  
27 complete the treatment contract and any subsequent addendums as recommended and provided by  
28 the PRP and as approved by the Board or its designee for the duration of the probation period.

1 The costs for PRP participation shall be borne by the respondent.

2 ...

3 "Failure to timely contact or enroll in the PRP, or successfully participate in and complete  
4 the treatment contract and/or any addendums, shall be considered a violation of probation. . . ."

5 6. Respondent's probation is subject to revocation because he failed to comply with  
6 Condition 1, referenced above. The facts and circumstances regarding this violation are that on or  
7 about February 1, 2016, the administrative vendor for the PRP sent a letter to the Board stating  
8 Respondent failed to contact them and enroll in the PRP.

9 **SECOND CAUSE TO REVOKE PROBATION**

10 **(Report to the Board)**

11 7. At all times after the effective date of Respondent's probation, Condition 4 stated:

12 "Respondent shall report to the board quarterly, on a schedule as directed by the board or its  
13 designee. The report shall be made either in person or in writing, as directed. Among other  
14 requirements, respondent shall state in each report under penalty of perjury whether there has  
15 been compliance with all the terms and conditions of probation. Failure to submit timely reports  
16 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency  
17 in submission of reports as directed may be added to the total period of probation. Moreover, if  
18 the final probation report is not made as directed, probation shall be automatically extended until  
19 such time as the final report is made and accepted by the board."

20 8. Respondent's probation is subject to revocation because he failed to comply with  
21 Condition 4, referenced above. The facts and circumstances regarding this violation are as  
22 follows:

23 A. On or about November 4, 2015, the Board sent Respondent a letter directing him to  
24 attend an office conference on November 20, 2015, to review the terms and conditions of  
25 probation. Respondent failed to appear.

26 B. On or about February 2, 2016, the Board sent Respondent a non-compliance letter  
27 and further instructed Respondent to submit a comprehensive quarterly report by February 12,  
28 2016. Respondent failed to submit his report.

1 **THIRD CAUSE TO REVOKE PROBATION**

2 **(Interview with the Board)**

3 9. At all times after the effective date of Respondent's probation, Condition 5 stated:

4 "Upon receipt of reasonable prior notice, Respondent shall appear in person for interviews  
5 with the board or its designee, at such intervals and locations as are determined by the board or its  
6 designee. Failure to appear for any scheduled interview without prior notification to board staff,  
7 or failure to appear for two (2) or more scheduled interviews with the board or its designee during  
8 the period of probation, shall be considered a violation of probation."

9 10. Respondent's probation is subject to revocation because he failed to comply with  
10 Condition 5, referenced above. The facts and circumstances regarding this violation are as  
11 follows:

12 A. On or about November 4, 2015, the Board sent Respondent a letter informing him he  
13 was required to report in person at an office conference on November 20, 2015, to review the  
14 terms and conditions of his probation. Respondent failed to respond or appear on November 20,  
15 2015.

16 B. On or about December 1, 2015, the Board sent Respondent a second letter notifying  
17 Respondent he was required to report in person to the Board at a office conference on December  
18 11, 2015. On December 11, 2015, Respondent failed to appear before the Board.

19 C. On or about January 7, 2016, the Board sent Respondent a third letter requesting his  
20 appearance in person at an office conference on January 22, 2016. Respondent failed to appear  
21 on January 22, 2016.

22 **FOURTH CAUSE TO REVOKE PROBATION**

23 **(Psychiatric Evaluation)**

24 11. At all times after the effective date of Respondent's probation, Condition 9 stated:

25 "Commencing the effective date of this decision, and on a periodic basis as may be required  
26 by the board or its designee, respondent shall undergo, at his own expense, psychiatric  
27 evaluation(s) by a board-appointed or board-approved licensed mental health practitioner. The  
28 approved evaluator shall be provided with a copy of the board's Accusation and decision.

1 Respondent shall sign a release authorizing the evaluator to furnish the board with a current  
2 diagnosis and a written report regarding the Respondent's judgment and ability to function  
3 independently as a pharmacist with safety to the public. Respondent shall comply with all the  
4 recommendations of the evaluator if directed by the board or its designee."

5 12. Respondent's probation is subject to revocation because he failed to comply with  
6 Condition 9, referenced above. The facts and circumstances regarding this violation are that  
7 Respondent did not submit the name of an appropriate mental health evaluator or undergo an  
8 evaluation.

9 **FIFTH CAUSE TO REVOKE PROBATION**

10 **(Psychotherapy)**

11 13. At all times after the effective date of Respondent's probation, Condition 10 stated:  
12 "Within thirty (30) days of the effective date of this decision, respondent shall submit to the  
13 board or its designee, for prior approval, the name and qualifications of a licensed mental health  
14 practitioner of Respondent's choice. Within thirty (30) days of approval thereof, respondent shall  
15 submit documentation to the board demonstrating the commencement of psychotherapy with the  
16 approved licensed mental health practitioner. . . . Failure to comply with any requirement or  
17 deadline stated by this paragraph shall be considered a violation of probation."

18 14. Respondent's probation is subject to revocation because he failed to comply with  
19 Condition 10, referenced above. The facts and circumstances regarding this violation are that  
20 Respondent did not submit the name of a mental health practitioner to the Board within 30 days,  
21 nor did he provide documentation that he commenced psychotherapy.

22 **SIXTH CAUSE TO REVOKE PROBATION**

23 **(Medical Evaluation)**

24 15. At all times after the effective date of Respondent's probation, Condition 11 stated:  
25 "Within thirty (30) days of the effective date of this decision, and on a periodic basis  
26 thereafter as may be required by the Board or its designee, respondent shall undergo a medical  
27 evaluation, at Respondent's own expense, by a Board-appointed or Board-approved physician  
28 who shall furnish a medical report to the Board. The approved physician shall be provided with a

1 copy of the Board's Accusation and decision. A record of this notification must be provided to the  
2 Board upon request. Respondent shall sign a release authorizing the physician to furnish the  
3 Board with a current diagnosis and a written report regarding the Respondent's ability to function  
4 independently as a pharmacist with safety to the public. Respondent shall comply with all the  
5 recommendations of the physician if directed by the board or its designee."

6 16. Respondent's probation is subject to revocation because he failed to comply with  
7 Condition 11, referenced above. The facts and circumstances regarding this violation are that  
8 Respondent failed to submit the name of a licensed mental health practitioner for approval within  
9 30 days.

### 10 **SEVENTH CAUSE TO REVOKE PROBATION**

#### 11 **(Random Drug Screening)**

12 17. At all times after the effective date of Respondent's probation, Condition 12 stated:

13 "Respondent, at his own expense, shall participate in random testing, including but not  
14 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug  
15 screening program as directed by the board or its designee. Respondent may be required to  
16 participate in testing for the entire probation period and the frequency of testing will be  
17 determined by the board or its designee. At all times, respondent shall fully cooperate with the  
18 board or its designee, and shall, when directed, submit to such tests and samples for the detection  
19 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its  
20 designee may direct. Failure to timely submit to testing as directed shall be considered a violation  
21 of probation."

22 18. Respondent's probation is subject to revocation because he failed to comply with  
23 Condition 12, referenced above. The facts and circumstances regarding this violation are that  
24 Respondent failed to enroll in PRP, which was to conduct the screenings. Thus, Respondent has  
25 not submitted to any screenings.

### 26 **EIGHTH CAUSE TO REVOKE PROBATION**

#### 27 **(Prescription Coordination and Monitoring of Prescription Use)**

28 19. At all times after the effective date of Respondent's probation, Condition 14 stated:

1 "Within thirty (30) days of the effective date of this decision, Respondent shall submit to  
2 the board, for its prior approval, the name and qualifications of a single physician, nurse  
3 practitioner, physician assistant, or psychiatrist of Respondent's choice, who shall be aware of the  
4 Respondent's history with controlled substances, and/or dangerous drugs and of mental illness  
5 and who will coordinate and monitor any prescriptions for Respondent for dangerous drugs,  
6 controlled substances or mood-altering drugs. The approved practitioner shall be provided with a  
7 copy of the Board's Accusation and decision. A record of this notification must be provided to  
8 the Board upon request. Respondent shall sign a release authorizing the practitioner to  
9 communicate with the board about Respondent's treatment(s). The coordinating physician, nurse  
10 practitioner, physician assistant, or psychiatrist shall report to the Board on a quarterly basis for  
11 the duration of probation regarding Respondent's compliance with this condition. . . . Failure to  
12 timely submit the selected practitioner or replacement practitioner to the board for approval, or to  
13 ensure the required reporting thereby on the quarterly reports, shall be considered a violation of  
14 probation."

15 20. Respondent's probation is subject to revocation because he failed to comply with  
16 Condition 14, referenced above. The facts and circumstances regarding this violation are that  
17 Respondent failed to submit the name of a licensed practitioner for approval within 30 days.

18 **NINTH CAUSE TO REVOKE PROBATION**

19 **(Probation and Parole Reports)**

20 21. At all times after the effective date of Respondent's probation, Condition 18 stated:  
21 "Respondent shall provide a copy of the conditions of any criminal probation/parole to the  
22 board, in writing, within ten (10) days of the issuance or modification of those conditions.  
23 Respondent shall provide the name of his probation/parole officer to the board, in writing, within  
24 ten (10) days after that officer is designated or a replacement for that officer is designated.  
25 Respondent shall provide a copy of all criminal probation/parole reports to the board within ten  
26 (10) days after respondent receives a copy of such a report. Failure to timely make any of the  
27 submissions required hereby shall be considered a violation of probation."  
28

1           22. Respondent's probation is subject to revocation because he failed to comply with  
2 Condition 18, referenced above. The facts and circumstances regarding this violation are that  
3 Respondent failed to submit probation/parole reports as required.

4                                       **TENTH CAUSE TO REVOKE PROBATION**

5                                       **(Reimbursement of Costs)**

6           23. At all times after the effective date of Respondent's probation, Condition 20 stated:  
7           "As a condition precedent to successful completion of probation, respondent shall pay to  
8 the board its costs of investigation and prosecution in the amount of \$2,780. Respondent shall  
9 make said payments on a monthly basis on or before the same date each month as that assigned as  
10 the effective date for the Decision as follows: Within 30 days of the effective date of the  
11 Decision, respondent shall submit an initial payment of \$200 to the Board and thereafter \$200 per  
12 month for a period of 13 consecutive months, with a final payment in the 14<sup>th</sup> month in the  
13 amount of \$180. There shall be no deviation from this schedule absent prior written approval by  
14 the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a  
15 violation of probation.

16           "The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility  
17 to reimburse the board its costs of investigation and prosecution."

18           24. Respondent's probation is subject to revocation because he failed to comply with  
19 Condition 20, referenced above. The facts and circumstances regarding this violation are that  
20 Respondent has not made any payments in accordance with Condition 20. Respondent failed to  
21 submit payments as required in November 2015, December 2015, January 2016, February 2016,  
22 and March 2016.

23                                       **DISCIPLINE CONSIDERATIONS**

24           25. To determine the degree of discipline, if any, to be imposed on Respondent,  
25 Complainant alleges that on or about February 2, 2005, in a prior disciplinary action entitled In  
26 the Matter of the Accusation Against David Lee Huynh before the Board of Pharmacy, in Case  
27 No. 2781, Respondent's license was revoked, the revocation stayed, and Respondent placed on  
28 five years probation. The discipline in that case was premised on four convictions that occurred



1 in January, March, April, and May of 2003. Three convictions were for violation of Vehicle  
2 Code section 23152, subdivision (a) [Driving Under the Influence of Alcohol or Drugs], and one  
3 was for violation of Health and Safety Code section 11350, subdivision (a) [Possession of  
4 Narcotic Controlled Substance, to wit: Opiate (hydrocodone)]. That decision is now final and is  
5 attached as Exhibit B and incorporated by reference as if fully set forth.

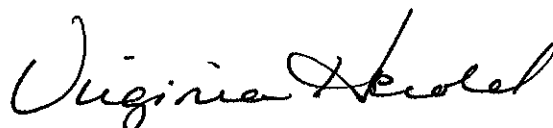
6 **PRAYER**

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 the probation that was granted by the Board of Pharmacy in Case No. 4587  
10 and imposing the disciplinary order that was stayed thereby revoking Pharmacist License No.  
11 RPH 52876 issued to David Lee Huynh;
- 12 2. Revoking or suspending Pharmacist License No. RPH 52876, issued to David Lee  
13 Huynh;
- 14 3. Taking such other and further action as deemed necessary and proper.

15  
16  
17 DATED: \_\_\_\_\_

4/14/16



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

18  
19  
20  
21  
22 LA2016600894  
52043426.docx

# **Exhibit A**

**Decision and Order**

**Board of Pharmacy Case No. 4587**

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

In the Matter of the Accusation Against:

**DAVID LEE HUYNH**  
6251 Lena  
Woodland Hills, CA 91367

**Pharmacist License No. RPH 52876**

Respondent.

Case No. 4587

OAH No. 2015020538

**DECISION AND ORDER**

Pursuant to the Board of Pharmacy's action on September 30, 2015, the attached Stipulated Settlement and Disciplinary Order was adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on November 9, 2015.

It is so ORDERED on October 9, 2015.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
Amy Gutierrez, Pharm.D.  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
2 THOMAS L. RINALDI  
Supervising Deputy Attorney General  
3 DESIREE TULLENERS  
Deputy Attorney General  
4 State Bar No. 157464  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2578  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
7

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

11 In the Matter of the Accusation Against:  
12 **DAVID LEE HUYNH**  
6251 Lena  
13 Woodland Hills, CA 91367  
14 **Pharmacist License No. RPH 52876**  
15 Respondent.

Case No. 4587

OAH No. 2015020538

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

16  
17 *IT IS HEREBY STIPULATED AND AGREED* by and between the parties to the above-  
18 entitled proceedings that the following matters are true:

19 PARTIES

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

24 2. Respondent David Lee Huynh ("Respondent") is represented in this proceeding by  
25 attorney Max B. Gorby, whose address is:

26 Max B. Gorby  
27 Law Offices of Max B. Gorby  
710 Wilshire Boulevard, Suite 420  
28 Santa Monica, CA 90401





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**1. Suspension**

**(a) Mental Health Evaluation**

Commencing on the effective date of this Decision, Respondent shall not engage in the practice of pharmacy until notified in writing by the Board that Respondent has been deemed psychologically fit to practice pharmacy safely, and the Board or its designee approves said recommendation.

During suspension, Respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the board.

During suspension, respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

During suspension, Respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the

1 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs  
2 and devices or controlled substances.

3 Respondent shall not engage in any activity that requires the professional judgment of a  
4 pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy.  
5 Respondent shall not perform the duties of a pharmacy technician or a designated representative  
6 for any entity licensed by the board.

7 Subject to the above restrictions, respondent may continue to own or hold an interest in any  
8 licensed premises in which he holds an interest at the time this decision becomes effective unless  
9 otherwise specified in this order.

10 Failure to comply with this suspension shall be considered a violation of probation.

11 **(b) Pharmacists Recovery Program (PRP)**

12 Commencing on the effective date of this Decision, Respondent shall not engage in the  
13 practice of pharmacy until after he has enrolled in the Pharmacist Recovery Program, completed  
14 an intake and evaluation assessment by the PRP, and has been notified in writing by the Board  
15 that he has been deemed to practice pharmacy safely. After he has been deemed fit to practice  
16 pharmacy by the PRP, at all times Respondent shall successfully participate in, and complete the  
17 treatment contract and any subsequent addendums as recommended and provided by the PRP and  
18 as approved by the Board or its designee for the duration of the probation period. The costs for  
19 PRP participation shall be borne by the Respondent.

20 The requirement of suspension until deemed safe to practice by the PRP evaluation is a  
21 separate and distinct requirement in addition to the suspension until deemed safe to practice by  
22 the mental health assessment in Condition 1(a).

23 If Respondent is currently enrolled in the PRP, said participation is now mandatory and as  
24 of the effective date of this decision is no longer considered a self-referral under Business and  
25 Professions Code section 4362(c)(2). Respondent shall successfully participate in and complete  
26 his current contract and any subsequent addendums with the PRP.

27 Failure to timely contact or enroll in the PRP, or successfully participate in and complete  
28 the treatment contract and/or any addendums, shall be considered a violation of probation.



1 Probation shall be automatically extended until Respondent successfully completes the  
2 PRP. Any person terminated from the PRP program shall be automatically suspended by the  
3 Board. Respondent may not resume the practice of pharmacy until notified by the Board in  
4 writing.

5 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a  
6 licensed practitioner as part of a documented medical treatment shall result in the automatic  
7 suspension of practice by respondent and shall be considered a violation of probation.  
8 Respondent may not resume the practice of pharmacy until notified by the Board in writing.

9 During suspension, respondent shall not enter any pharmacy area or any portion of the  
10 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of  
11 drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices  
12 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act  
13 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient  
14 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the  
15 Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs  
16 and controlled substances. Respondent shall not resume practice until notified by the Board.

17 During suspension, Respondent shall not engage in any activity that requires the  
18 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the  
19 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
20 designated representative for any entity licensed by the Board.

21 Subject to the above restrictions, Respondent may continue to own or hold an interest in  
22 any licensed premises in which he holds an interest at the time this Decision becomes effective  
23 unless otherwise specified in this order.

24 Failure to comply with this suspension shall be considered a violation of probation.

25 Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not  
26 timely paid to the PRP shall constitute a violation for probation. The Board will collect unpaid  
27 administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

28

1 Respondent shall work in a pharmacy setting with access to controlled substances for six  
2 (6) consecutive months before successfully completing probation. If Respondent fails to do so,  
3 probation shall be automatically extended until this condition has been met. Failure to satisfy this  
4 condition within six (6) months beyond the original date of expiration of the term of probation  
5 shall be considered a violation of probation.

6 **2. Tolling of Suspension**

7 During the period of suspension, Respondent shall not leave California for any period  
8 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess  
9 of the (10) days during suspension shall be considered a violation of probation. Moreover, any  
10 absence from California during the period of suspension exceeding ten (10) days shall toll the  
11 suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days  
12 respondent is absent from California. During any such period of tolling of suspension,  
13 respondent must nonetheless comply with all terms and conditions of probation.

14 Respondent must notify the board in writing within ten (10) days of departure, and must  
15 further notify the board in writing within ten (10) days of return. The failure to provide such  
16 notification(s) shall constitute a violation of probation. Upon such departure and return,  
17 respondent shall not resume the practice of pharmacy until notified by the board that the period of  
18 suspension has been satisfactorily completed.

19 **3. Obey All Laws**

20 Respondent shall obey all state and federal laws and regulations.

21 Respondent shall report any of the following occurrences to the board, in writing, within  
22 seventy-two (72) hours of such occurrence:

- 23 • an arrest or issuance of a criminal complaint for violation of any provision of the  
24 Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
25 substances laws
- 26 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any  
27 criminal complaint, information or indictment
- 28 • a conviction of any crime

- 1 • discipline, citation, or other administrative action filed by any state or federal agency  
2 which involves respondent's pharmacist license or which is related to the practice of  
3 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging  
4 for any drug, device or controlled substance,

5 Failure to timely report such occurrence shall be considered a violation of probation.

6 **4. Report to the Board**

7 Respondent shall report to the board quarterly, on a schedule as directed by the board or its  
8 designee. The report shall be made either in person or in writing, as directed. Among other  
9 requirements, respondent shall state in each report under penalty of perjury whether there has  
10 been compliance with all the terms and conditions of probation. Failure to submit timely reports  
11 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency  
12 in submission of reports as directed may be added to the total period of probation. Moreover, if  
13 the final probation report is not made as directed, probation shall be automatically extended until  
14 such time as the final report is made and accepted by the board.

15 **5. Interview with the Board**

16 Upon receipt of reasonable prior notice, Respondent shall appear in person for interviews  
17 with the board or its designee, at such intervals and locations as are determined by the board or its  
18 designee. Failure to appear for any scheduled interview without prior notification to board staff,  
19 or failure to appear for two (2) or more scheduled interviews with the board or its designee during  
20 the period of probation, shall be considered a violation of probation.

21 **6. Cooperate with Board Staff**

22 Respondent shall cooperate with the board's inspection program and with the board's  
23 monitoring and investigation of respondent's compliance with the terms and conditions of his  
24 probation. Failure to cooperate shall be considered a violation of probation.

25 **7. Continuing Education**

26 Respondent shall provide evidence of efforts to maintain skill and knowledge as a  
27 pharmacist as directed by the board or its designee.

28 ///

1           **8. Notice to Employers**

2           During the period of probation, Respondent shall notify all present and prospective  
3 employers of the Decision in Case Number 4587 and the terms, conditions and restrictions  
4 imposed on respondent by the decision, as follows:

5           Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
6 respondent undertaking any new employment, Respondent shall cause his direct supervisor,  
7 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's  
8 tenure of employment) and owner to report to the board in writing acknowledging that the listed  
9 individual(s) has/have read the decision in case number 4587, and terms and conditions imposed  
10 thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or  
11 supervisor(s) submit timely acknowledgment(s) to the board.

12           If Respondent works for or is employed by or through a pharmacy employment service,  
13 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity  
14 licensed by the Board of the terms and conditions of the Decision in Case Number 4587 in  
15 advance of the Respondent commencing work at each licensed entity. A record of this  
16 notification must be provided to the board upon request.

17           Furthermore, within thirty (30) days of the effective date of this Decision, and within fifteen  
18 (15) days of Respondent undertaking any new employment by or through a pharmacy  
19 employment service, Respondent shall cause his direct supervisor with the pharmacy employment  
20 service to report to the Board in writing acknowledging that he has read the Decision in case  
21 number 4587 and the terms and conditions imposed thereby. It shall be Respondent's  
22 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely  
23 acknowledgment(s) to the Board.

24           Failure to timely notify present or prospective employer(s) or to cause that/those  
25 employer(s) to submit timely acknowledgments to the Board shall be considered a violation of  
26 probation.

27           "Employment" within the meaning of this provision shall include any full-time,  
28 part-time, temporary, relief or pharmacy management service as a pharmacist or any

1 position for which a pharmacist license is a requirement or criterion for employment,  
2 whether the respondent is an employee, independent contractor or volunteer.

3 **9. Mental Health Examination**

4 Commencing the effective date of this decision, and on a periodic basis as may be  
5 required by the board or its designee, Respondent shall undergo, at his own expense,  
6 psychiatric evaluation(s) by a board-appointed or board-approved licensed mental health  
7 practitioner. The approved evaluator shall be provided with a copy of the board's  
8 Accusation and decision. Respondent shall sign a release authorizing the evaluator to  
9 furnish the board with a current diagnosis and a written report regarding the respondent's  
10 judgment and ability to function independently as a pharmacist with safety to the public.  
11 Respondent shall comply with all the recommendations of the evaluator if directed by the  
12 board or its designee.

13 If the evaluator recommends, and the board or its designee directs, Respondent shall  
14 undergo psychotherapy. Within thirty (30) days of notification by the Board that a  
15 recommendation for psychotherapy has been accepted, respondent shall submit to the Board  
16 or its designee, for prior approval, the name and qualification of a licensed mental health  
17 practitioner of respondent's choice. Within thirty (30) days of approval thereof by the  
18 board, Respondent shall submit documentation to the Board demonstrating the  
19 commencement of psychotherapy with the approved licensed mental health practitioner.  
20 Should Respondent, for any reason, cease treatment with the approved licensed mental  
21 health practitioner, Respondent shall notify the Board immediately and, within thirty (30)  
22 days of ceasing treatment therewith, submit the name of a replacement licensed mental  
23 health practitioner of Respondent's choice to the Board for its prior approval. Within thirty  
24 (30) days of approval thereof, Respondent shall submit documentation to the Board  
25 demonstrating the commencement of psychotherapy with the approved replacement.  
26 Failure to comply with any requirement or deadline stated by this paragraph shall be  
27 considered a violation of probation.

28 ///

1           Upon approval of the initial or any subsequent licensed mental health practitioner,  
2 Respondent shall undergo and continue treatment with that therapist, at Respondent's own  
3 expense, until the therapist recommends in writing to the Board, and the Board or its  
4 designee agrees by way of a written notification to Respondent, that no further  
5 psychotherapy is necessary. Upon receipt of such recommendation from the treating  
6 therapist, and before determining whether to accept or reject said recommendation, the  
7 board or its designee may require Respondent to undergo, at Respondent's expense, a  
8 mental health evaluation by a separate board-appointed or board-approved evaluator. If the  
9 approved evaluator recommends that Respondent continue psychotherapy, the board or its  
10 designee may require Respondent to continue psychotherapy.

11           Psychotherapy shall be at least once a week unless otherwise approved by the  
12 Board. Respondent shall provide the therapist with a copy of the Board's Accusation and  
13 Decision no later than the first therapy session. Respondent shall take all necessary steps to  
14 ensure that the treating therapist submits written quarterly reports to the Board concerning  
15 Respondent's fitness to practice, progress in treatment, and other such information as may  
16 be required by the Board or its designee.

17           If at any time the approved evaluator or therapist determines that Respondent is  
18 unable to practice safely or independently as a pharmacist, the licensed mental health  
19 practitioner shall notify the Board immediately by telephone and follow up by written letter  
20 within three (3) working days. Upon notification from the Board or its designee of this  
21 determination, Respondent shall be automatically suspended and shall not resume practice  
22 until notified by the Board that practice may be resumed.

#### 23           10. **Psychotherapy**

24           Within thirty (30) days of the effective date of this Decision, Respondent shall  
25 submit to the Board or its designee, for prior approval, the name and qualifications of a  
26 licensed mental health practitioner of Respondent's choice. Within thirty (30) days of  
27 approval thereof, Respondent shall submit documentation to the Board demonstrating the  
28 commencement of psychotherapy with the approved licensed mental health practitioner.

1 Should Respondent, for any reason, cease treatment with the approved licensed mental  
2 health practitioner, Respondent shall notify the Board immediately and, within thirty (30)  
3 days of ceasing treatment, submit the name of a replacement psychotherapist or licensed  
4 mental health practitioner of respondent's choice to the board for its prior approval. Within  
5 thirty (30) days of approval thereof, Respondent shall submit documentation to the Board  
6 demonstrating the commencement of psychotherapy with the approved replacement.  
7 Failure to comply with any requirement or deadline stated by this paragraph shall be  
8 considered a violation of probation.

9       Upon approval of the initial or any subsequent licensed mental health practitioner,  
10 Respondent shall undergo and continue treatment with that therapist, at Respondent's own  
11 expense, until the therapist recommends in writing to the Board, and the Board or its  
12 designee agrees by way of a written notification to Respondent, that no further  
13 psychotherapy is necessary. Upon receipt of such recommendation from the treating  
14 therapist, and before determining whether to accept or reject said recommendation, the  
15 board or its designee may require Respondent to undergo, at Respondent's own expense, a  
16 mental health evaluation by a Board-appointed or Board-approved psychiatrist or  
17 psychologist. If the approved evaluator recommends that Respondent continue  
18 psychotherapy, the Board or its designee may require Respondent to continue  
19 psychotherapy.

20       Psychotherapy shall be at least once a week unless otherwise approved by the board.  
21 Respondent shall provide the therapist with a copy of the Board's Accusation and Decision  
22 no later than the first therapy session. Respondent shall take all necessary steps to ensure  
23 that the treating therapist submits written quarterly reports to the Board concerning  
24 Respondent's fitness to practice, progress in treatment, and such other information as may  
25 be required by the Board or its designee.

26       If at any time the treating therapist determines that Respondent cannot practice  
27 safely or independently, the therapist shall notify the Board immediately by telephone and  
28 follow up by written letter within three (3) working days. Upon notification from the Board

1 or its designee of this determination, Respondent shall be automatically suspended and shall  
2 not resume practice until notified by the Board that practice may be resumed.

3 During suspension, Respondent shall not enter any pharmacy area or any portion of  
4 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other  
5 distributor of drugs which is licensed by the Board, or any manufacturer, or where  
6 dangerous drugs and devices or controlled substances are maintained. Respondent shall not  
7 practice pharmacy nor do any act involving drug selection, selection of stock,  
8 manufacturing, compounding, dispensing or patient consultation; nor shall Respondent  
9 manage, administer, or be a consultant to any licensee of the board, or have access to or  
10 control the ordering, manufacturing or dispensing of dangerous drugs and controlled  
11 substances. Respondent shall not resume practice until notified by the board.

12 During suspension, Respondent shall not engage in any activity that requires the  
13 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of  
14 the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician  
15 or a designated representative for any entity licensed by the Board.

16 Subject to the above restrictions, Respondent may continue to own or hold an  
17 interest in any licensed premises in which he holds an interest at the time this Decision  
18 becomes effective unless otherwise specified in this order. Failure to comply with this  
19 suspension shall be considered a violation of probation.

#### 20 11. Medical Evaluation

21 Within thirty (30) days of the effective date of this decision, and on a periodic basis  
22 thereafter as may be required by the Board or its designee, Respondent shall undergo a  
23 medical evaluation, at Respondent's own expense, by a Board-appointed or Board-approved  
24 physician who shall furnish a medical report to the Board. The approved physician shall be  
25 provided with a copy of the Board's Accusation and Decision. A record of this notification  
26 must be provided to the Board upon request. Respondent shall sign a release authorizing  
27 the physician to furnish the Board with a current diagnosis and a written report regarding  
28 the Respondent's ability to function independently as a pharmacist with safety to the public.



1 Respondent shall comply with all the recommendations of the physician if directed by the  
2 Board or its designee.

3         If the physician recommends, and the Board or its designee directs, that Respondent  
4 undergo medical treatment, Respondent shall, within thirty (30) days of written notice from  
5 the Board, submit to the Board or its designee, for prior approval, the name and  
6 qualifications of a licensed physician of respondent's choice. Within thirty (30) days of  
7 approval thereof, Respondent shall submit documentation to the Board demonstrating the  
8 commencement of treatment with the approved physician. Should Respondent, for any  
9 reason, cease treatment with the approved physician, respondent shall notify the Board  
10 immediately and, within thirty (30) days of ceasing treatment, submit the name of a  
11 replacement physician of respondent's choice to the Board or its designee for prior  
12 approval. Within thirty (30) days of approval thereof, Respondent shall submit  
13 documentation to the Board demonstrating the commencement of treatment with the  
14 approved replacement. Failure to comply with any deadline stated by this paragraph shall  
15 be considered a violation of probation.

16         Upon approval of the initial or any subsequent physician, Respondent shall undergo  
17 and continue treatment with that physician, at respondent's own expense, until the treating  
18 physician recommends in writing to the Board, and the Board or its designee agrees by way  
19 of a written notification to Respondent, that no further treatment is necessary. Upon receipt  
20 of such recommendation from the treating physician, and before determining whether to  
21 accept or reject said recommendation, the Board or its designee may require Respondent to  
22 undergo; at Respondent's own expense, a medical evaluation by a separate Board-appointed  
23 or Board-approved physician. If the approved evaluating physician recommends that  
24 Respondent continue treatment, the Board or its designee may require Respondent to  
25 continue treatment.

26         Respondent shall take all necessary steps to ensure that any treating physician  
27 submits written quarterly reports to the Board concerning Respondent's fitness to practice,

28. ///

1 progress in treatment, and other such information as may be required by the Board or its  
2 designee.

3 If at any time an approved evaluating physician or Respondent's approved treating  
4 physician determines that Respondent is unable to practice safely or independently as a  
5 pharmacist, the evaluating or treating physician shall notify the board immediately by  
6 telephone and follow up by written letter within three (3) working days. Upon notification  
7 from the Board or its designee of this determination, Respondent shall be automatically  
8 suspended and shall not resume practice until notified by the Board that practice may be  
9 resumed.

10 During suspension, Respondent shall not enter any pharmacy area or any portion of  
11 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other  
12 distributor of drugs which is licensed by the Board, or any manufacturer, or where  
13 dangerous drugs and devices or controlled substances are maintained. Respondent shall not  
14 practice pharmacy nor do any act involving drug selection, selection of stock,  
15 manufacturing, compounding, dispensing or patient consultation; nor shall Respondent  
16 manage, administer, or be a consultant to any licensee of the board, or have access to or  
17 control the ordering, manufacturing or dispensing of dangerous drugs and controlled  
18 substances. Respondent shall not resume practice until notified by the Board.

19 During suspension, Respondent shall not engage in any activity that requires the  
20 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of  
21 the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician  
22 or a designated representative for any entity licensed by the Board.

23 Subject to the above restrictions, Respondent may continue to own or hold an interest  
24 in any licensed premises in which he holds an interest at the time this Decision becomes  
25 effective unless otherwise specified in this order.

26 Failure to comply with this suspension shall be considered a violation of probation.

27 If recommended by the evaluating physician and approved by the board, Respondent  
28 shall be suspended from practicing pharmacy until the treating physician recommends, in

1 writing, stating the basis therefor, that Respondent can safely and independently resume the  
2 practice of a pharmacist, and the Board or its designee approves said recommendation.  
3 Respondent shall not resume practice until notified by the Board that practice may be  
4 resumed.

5 During suspension, Respondent shall not enter any pharmacy area or any portion of  
6 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other  
7 distributor of drugs which is licensed by the board, or any manufacturer, or where  
8 dangerous drugs and devices or controlled substances are maintained. Respondent shall not  
9 practice pharmacy nor do any act involving drug selection, selection of stock,  
10 manufacturing, compounding, dispensing or patient consultation; nor shall respondent  
11 manage, administer, or be a consultant to any licensee of the board, or have access to or  
12 control the ordering, manufacturing or dispensing of dangerous drugs and controlled  
13 substances. Respondent shall not resume practice until notified by the board.

14 During suspension, respondent shall not engage in any activity that requires the  
15 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of  
16 the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician  
17 or a designated representative for any entity licensed by the Board.

18 Subject to the above restrictions, respondent may continue to own or hold an interest  
19 in any licensed premises in which he holds an interest at the time this decision becomes  
20 effective unless otherwise specified in this order.

21 Failure to comply with this suspension shall be considered a violation of probation.

## 22 12. Random Drug Screening

23 Respondent, at his own expense, shall participate in random testing, including but not  
24 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other  
25 drug screening program as directed by the Board or its designee. Respondent may be  
26 required to participate in testing for the entire probation period and the frequency of testing  
27 will be determined by the board or its designee. At all times, Respondent shall fully  
28 cooperate with the Board or its designee, and shall, when directed, submit to such tests and

1 samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other  
2 controlled substances as the Board or its designee may direct. Failure to timely submit to  
3 testing as directed shall be considered a violation of probation. Upon request of the Board  
4 or its designee, Respondent shall provide documentation from a licensed practitioner that  
5 the prescription for a detected drug was legitimately issued and is a necessary part of the  
6 treatment of the Respondent. Failure to timely provide such documentation shall be  
7 considered a violation of probation. Any confirmed positive test for alcohol or for any drug  
8 not lawfully prescribed by a licensed practitioner as part of a documented medical treatment  
9 shall be considered a violation of probation and shall result in the automatic suspension of  
10 practice of pharmacy by Respondent. Respondent may not resume the practice of  
11 pharmacy until notified by the Board in writing.

12         During suspension, Respondent shall not enter any pharmacy area or any portion of  
13 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other  
14 distributor of drugs which is licensed by the Board, or any manufacturer, or where  
15 dangerous drugs and devices or controlled substances are maintained. Respondent shall not  
16 practice pharmacy nor do any act involving drug selection, selection of stock,  
17 manufacturing, compounding, dispensing or patient consultation; nor shall Respondent  
18 manage, administer, or be a consultant to any licensee of the Board, or have access to or  
19 control the ordering, manufacturing or dispensing of dangerous drugs and controlled  
20 substances. Respondent shall not resume practice until notified by the Board.

21         During suspension Respondent shall not engage in any activity that requires the  
22 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of  
23 the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician  
24 or a designated representative for any entity licensed by the Board.

25         Subject to the above restrictions, Respondent may continue to own or hold an interest  
26 in any licensed premises in which he holds an interest at the time this Decision becomes  
27 effective unless otherwise specified in this order.

28         Failure to comply with this suspension shall be considered a violation of probation.

1           **13. Abstain from Drugs and Alcohol Use**

2           Respondent shall completely abstain from the possession or use of alcohol, controlled  
3 substances, dangerous drugs and their associated paraphernalia except when the drugs are  
4 lawfully prescribed by a licensed practitioner as part of a documented medical treatment.  
5 Upon request of the Board or its designee, Respondent shall provide documentation from  
6 the licensed practitioner that the prescription for the drug was legitimately issued and is a  
7 necessary part of the treatment of the respondent. Failure to timely provide such  
8 documentation shall be considered a violation of probation. Respondent shall ensure that  
9 he is not in the same physical location as individuals who are using illicit substances even if  
10 respondent is not personally ingesting the drugs. Any possession or use of alcohol,  
11 controlled substances, or their associated paraphernalia not supported by the documentation  
12 timely provided, and/or any physical proximity to persons using illicit substances, shall be  
13 considered a violation of probation.

14           **14. Prescription Coordination and Monitoring of Prescription Use**

15           Within thirty (30) days of the effective date of this decision, Respondent shall submit  
16 to the Board, for its prior approval, the name and qualifications of a single physician, nurse  
17 practitioner, physician assistant, or psychiatrist of Respondent's choice, who shall be aware  
18 of the Respondent's history with controlled substances, and/or dangerous drugs and of  
19 mental illness and who will coordinate and monitor any prescriptions for Respondent for  
20 dangerous drugs, controlled substances or mood-altering drugs. The approved practitioner  
21 shall be provided with a copy of the Board's Accusation and Decision. A record of this  
22 notification must be provided to the Board upon request. Respondent shall sign a release  
23 authorizing the practitioner to communicate with the Board about Respondent's  
24 treatment(s). The coordinating physician, nurse practitioner, physician assistant, or  
25 psychiatrist shall report to the Board on a quarterly basis for the duration of probation  
26 regarding Respondent's compliance with this condition. If any substances considered  
27 addictive have been prescribed, the report shall identify a program for the time limited use  
28 of any such substances. The Board may require that the single coordinating physician,

1 nurse practitioner, physician assistant or psychiatrist be a specialist in addictive medicine,  
2 or consult a specialist in addictive medicine. Should Respondent, for any reason, cease  
3 supervision by the approved practitioner, Respondent shall notify the board immediately  
4 and, within thirty (30) days of ceasing treatment, submit the name of a replacement  
5 physician, nurse practitioner, physician assistant, or psychiatrist of Respondent's choice to  
6 the Board or its designee for its prior approval. Failure to timely submit the selected  
7 practitioner or replacement practitioner to the Board for approval, or to ensure the required  
8 reporting thereby on the quarterly reports, shall be considered a violation of probation.

9 If at any time an approved practitioner determines that Respondent is unable to  
10 practice safely or independently as a pharmacist, the practitioner shall notify the Board  
11 immediately by telephone and follow up by written letter within three (3) working days.  
12 Upon notification from the Board or its designee of this determination, Respondent shall be  
13 automatically suspended and shall not resume practice until notified by the Board that  
14 practice may be resumed.

15 During suspension, Respondent shall not enter any pharmacy area or any portion of  
16 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other  
17 distributor of drugs which is licensed by the Board, or any manufacturer, or where  
18 dangerous drugs and devices or controlled substances are maintained. Respondent shall not  
19 practice pharmacy nor do any act involving drug selection, selection of stock,  
20 manufacturing, compounding, dispensing or patient consultation; nor shall Respondent  
21 manage, administer, or be a consultant to any licensee of the Board, or have access to or  
22 control the ordering, manufacturing or dispensing of dangerous drugs and controlled  
23 substances. Respondent shall not resume practice until notified by the Board.

24 During suspension, Respondent shall not engage in any activity that requires the  
25 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of  
26 the practice of pharmacy. Respondent shall not perform the duties of a pharmacy  
27 technician or a designated representative for any entity licensed by the Board.

28 ///

1 Subject to the above restrictions, Respondent may continue to own or hold an interest  
2 in any licensed premises in which he holds an interest at the time this Decision becomes  
3 effective unless otherwise specified in this order.

4 Failure to comply with this suspension shall be considered a violation of probation.

5 **15. Supervised Practice**

6 During the period of probation, Respondent shall practice only under the supervision  
7 of a licensed pharmacist not on probation with the board. Upon and after the effective date  
8 of this Decision, Respondent shall not practice pharmacy and his license shall be  
9 automatically suspended until a supervisor is approved by the Board or its designee. The  
10 supervision shall be, as required by the Board or its designee, either:

11 Continuous – At least 75% of a work week

12 Substantial - At least 50% of a work week

13 Partial - At least 25% of a work week

14 Daily Review - Supervisor's review of probationer's daily activities within 24  
15 hours

16 Within thirty (30) days of the effective date of this Decision, Respondent shall have  
17 his supervisor submit notification to the Board in writing stating that the supervisor has read  
18 the Decision in Case Number 4587 and is familiar with the required level of supervision as  
19 determined by the Board or its designee. It shall be the respondent's responsibility to  
20 ensure that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely  
21 acknowledgement(s) to the Board. Failure to cause the direct supervisor and the  
22 pharmacist-in-charge to submit timely acknowledgements to the Board shall be considered  
23 a violation of probation.

24 If Respondent changes employment, it shall be the respondent's responsibility to  
25 ensure that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely  
26 acknowledgement(s) to the Board. Respondent shall have his new supervisor, within  
27 fifteen (15) days after employment commences, submit notification to the Board in writing  
28 stating the direct supervisor and pharmacist-in-charge have read the Decision in Case

1 Number 4587 and is familiar with the level of supervision as determined by the Board.  
2 Respondent shall not practice pharmacy and his license shall be automatically suspended  
3 until the Board or its designee approves a new supervisor. Failure to cause the direct  
4 supervisor and the pharmacist-in-charge to submit timely acknowledgements to the Board  
5 shall be considered a violation of probation.

6 Within ten (10) days of leaving employment, respondent shall notify the Board in  
7 writing.

8 During suspension, Respondent shall not enter any pharmacy area or any portion of  
9 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other  
10 distributor of drugs which is licensed by the Board, or any manufacturer, or where  
11 dangerous drugs and devices or controlled substances are maintained. Respondent shall not  
12 practice pharmacy nor do any act involving drug selection; selection of stock,  
13 manufacturing, compounding, dispensing or patient consultation; nor shall Respondent  
14 manage, administer, or be a consultant to any licensee of the board, or have access to or  
15 control the ordering, manufacturing or dispensing of dangerous drugs and controlled  
16 substances. Respondent shall not resume practice until notified by the Board.

17 During suspension, Respondent shall not engage in any activity that requires the  
18 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of  
19 the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician  
20 or a designated representative for any entity licensed by the Board.

21 Subject to the above restrictions, Respondent may continue to own or hold an interest  
22 in any licensed premises in which he holds an interest at the time this Decision becomes  
23 effective unless otherwise specified in this order.

24 Failure to comply with this suspension shall be considered a violation of probation.

25 **16. No Supervision of Ancillary Personnel**

26 During the period of probation, Respondent shall not supervise any ancillary  
27 personnel, including, but not limited to, pharmacy technicians or designated representatives  
28 in any entity licensed by the Board.



1 Failure to comply with this provision shall be considered a violation of probation.

2 **17. No Ownership of Licensed Premises**

3 Respondent shall not own, have any legal or beneficial interest in, or serve as a  
4 manager, administrator, member, officer, director, trustee, associate, or partner of any  
5 business, firm, partnership, or corporation currently or hereinafter licensed by the Board.  
6 Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the  
7 board within ninety (90) days following the effective date of this Decision and shall  
8 immediately thereafter provide written proof thereof to the Board. Failure to timely divest  
9 any legal or beneficial interest(s) or provide documentation thereof shall be considered a  
10 violation of probation.

11 **18. Criminal Probation/Parole Reports**

12 Respondent shall provide a copy of the conditions of any criminal probation/parole to  
13 the board, in writing, within ten (10) days of the issuance or modification of those  
14 conditions. Respondent shall provide the name of his probation/parole officer to the Board,  
15 in writing, within ten (10) days after that officer is designated or a replacement for that  
16 officer is designated. Respondent shall provide a copy of all criminal probation/parole  
17 reports to the Board within ten (10) days after respondent receives a copy of such a report.  
18 Failure to timely make any of the submissions required hereby shall be considered a  
19 violation of probation.

20 **19. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC),**

21 **Serving as Designated Representative-in-Charge, or Serving as a Consultant**

22 During the period of probation, Respondent shall not supervise any intern pharmacist, be  
23 the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the  
24 board nor serve as a consultant unless otherwise specified in this order. Assumption of any such  
25 unauthorized supervision responsibilities shall be considered a violation of probation.

26 ///

27 ///

28 ///

1           **20. Reimbursement of Board Costs**

2           As a condition precedent to successful completion of probation, Respondent shall pay to the  
3 board its costs of investigation and prosecution in the amount of \$2,780. Respondent shall make  
4 said payments on a monthly basis on or before the same date each month as that assigned as the  
5 effective date for the Decision as follows: Within 30 days of the effective date of the Decision,  
6 respondent shall submit an initial payment of \$200 to the Board and thereafter \$200 per month  
7 for a period of 13 consecutive months, with a final payment in the 14<sup>th</sup> month in the amount of  
8 \$180.

9           There shall be no deviation from this schedule absent prior written approval by the Board or  
10 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of  
11 probation.

12           The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to  
13 reimburse the board its costs of investigation and prosecution.

14           **21. Probation Monitoring Costs**

15           Respondent shall pay any costs associated with probation monitoring as determined by the  
16 Board each and every year of probation. Such costs shall be payable to the board on a schedule  
17 as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed  
18 shall be considered a violation of probation.

19           **22. Status of License**

20           Respondent shall, at all times while on probation, maintain an active, current license with  
21 the board, including any period during which suspension or probation is tolled. Failure to  
22 maintain an active, current license shall be considered a violation of probation.

23           If Respondent's license expires or is cancelled by operation of law or otherwise at any time  
24 during the period of probation, including any extensions thereof due to tolling or otherwise, upon  
25 renewal or reapplication Respondent's license shall be subject to all terms and conditions of this  
26 probation not previously satisfied.

27           ///

28           ///

1           **23. License Surrender While on Probation/Suspension**

2           Following the effective date of this Decision, should Respondent cease practice due to  
3 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,  
4 Respondent may tender his license to the Board for surrender. The Board or its designee shall  
5 have the discretion whether to grant the request for surrender or take any other action it deems  
6 appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent  
7 will no longer be subject to the terms and conditions of probation. This surrender constitutes a  
8 record of discipline and shall become a part of the Respondent's license history with the Board.

9           Upon acceptance of the surrender, Respondent shall relinquish his pocket and wall license  
10 to the Board within ten (10) days of notification by the Board that the surrender is accepted.  
11 Respondent may not reapply for any license from the Board for three (3) years from the effective  
12 date of the surrender. Respondent shall meet all requirements applicable to the license sought as  
13 of the date the application for that license is submitted to the Board, including any outstanding  
14 costs.

15           **24. Notification of a Change in Name, Residence Address, Mailing Address or**  
16 **Employment**

17           Respondent shall notify the Board in writing within ten (10) days of any change of  
18 employment. Said notification shall include the reasons for leaving, the address of the new  
19 employer, the name of the supervisor and owner, and the work schedule if known. Respondent  
20 shall further notify the Board in writing within ten (10) days of a change in name, residence  
21 address, mailing address, or phone number.

22           Failure to timely notify the Board of any change in employer(s), name(s), address(es), or  
23 phone number(s) shall be considered a violation of probation.

24           **25. Tolling of Probation**

25           Except during periods of suspension, Respondent shall, at all times while on probation, be  
26 employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any  
27 month during which this minimum is not met shall toll the period of probation, i.e., the period of  
28 probation shall be extended by one month for each month during which this minimum is not met.

1 During any such period of tolling of probation, respondent must nonetheless comply with all  
2 terms and conditions of probation.

3 Should Respondent, regardless of residency, for any reason (including vacation) cease  
4 practicing as a pharmacist for a minimum of 40 hours per calendar month in California,  
5 respondent must notify the Board in writing within ten (10) days of the cessation of practice, and  
6 must further notify the Board in writing within ten (10) days of the resumption of practice. Any  
7 failure to provide such notification(s) shall be considered a violation of probation.

8 It is a violation of probation for Respondent's probation to remain tolled pursuant to the  
9 provisions of this condition for a total period, counting consecutive and non-consecutive months,  
10 exceeding thirty-six (36) months.

11 "Cessation of practice" means any calendar month during which respondent is  
12 not practicing as a pharmacist for at least 40 hours, as defined by Business and  
13 Professions Code section 4000 et seq. "Resumption of practice" means any calendar  
14 month during which respondent is practicing as a pharmacist for at least 40 hours as a  
15 pharmacist as defined by Business and Professions Code section 4000 et seq.

16 Respondent is required to practice as a pharmacist in a licensed pharmacy setting that  
17 dispenses medication for a minimum of one year prior to the completion of probation. After the  
18 first year of probation, the Board or its designee may consider a modification of this requirement.  
19 If Respondent fails to comply with this requirement or a subsequent modification thereto, such  
20 failure shall be considered a violation of probation.

#### 21 26. Violation of Probation

22 If Respondent has not complied with any term or condition of probation, the Board shall  
23 have continuing jurisdiction over respondent, and probation shall automatically be extended, until  
24 all terms and conditions have been satisfied or the Board has taken other action as deemed  
25 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and  
26 to impose the penalty that was stayed.

27 If Respondent violates probation in any respect, the Board, after giving Respondent notice  
28 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that


1 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a  
2 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If  
3 a petition to revoke probation or an accusation is filed against respondent during probation, the  
4 board shall have continuing jurisdiction and the period of probation shall be automatically  
5 extended until the petition to revoke probation or accusation is heard and decided.

6 **27. Completion of Probation**

7 Upon written notice by the Board or its designee indicating successful completion of  
8 probation, Respondent's license will be fully restored

9 ACCEPTANCE

10 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
11 discussed it with my attorney, Max B. Gorby. I understand the stipulation and the effect it will  
12 have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order  
13 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the  
14 Board of Pharmacy.

15  
16 DATED: 5-27-15   
17 DAVID LEE HUYNH  
18 Respondent  
19

20 I have read and fully discussed with Respondent David Lee Huynh the terms and conditions  
21 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve  
22 its form and content.

23  
24 DATED: 5-27-15   
25 MAX B. GORBY  
26 Attorney for Respondent  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

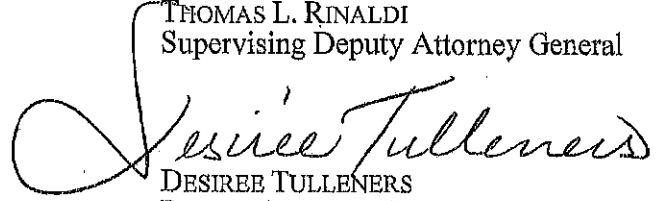
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy.

Dated: *May 27, 2015*

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
THOMAS L. RINALDI  
Supervising Deputy Attorney General

  
DESIREE TULLENERS  
Deputy Attorney General  
*Attorneys for Complainant*

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 DESIREE TULLENERS  
Deputy Attorney General  
4 State Bar No. 157464  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2578  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*  
7

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

11 In the Matter of the Accusation Against:  
12 **DAVID LEE HUYNH**  
6251 Lena  
13 Woodland Hills, California 91367  
14 **Original Pharmacist License No. RPH 52876**  
15 Respondent.

Case No. 4587  
**ACCUSATION**

17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).  
21 2. On or about September 5, 2001, the Board issued Original Pharmacist License No.  
22 RPH 52876 to David Lee Huynh (Respondent). The Pharmacist License was in full force and  
23 effect at all times relevant to the charges brought herein, and will expire on October 31, 2014,  
24 unless renewed.

25 **JURISDICTION**

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

28 ///

1 STATUTORY PROVISIONS

2 4. Section 490 states, in pertinent part:

3 "(a) In addition to any other action that a board is permitted to take against a licensee, a  
4 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
5 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
6 or profession for which the license was issued.

7 (b) Notwithstanding any other provision of law, a board may exercise any authority to  
8 discipline a licensee for conviction of a crime that is independent of the authority granted under  
9 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
10 of the business or profession for which the licensee's license was issued.

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

17 5. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or  
18 revoked."

19 6. Section 4300.1 states:

20 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by  
21 operation of law or by order or decision of the board or court of law, the placement of a license on  
22 a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of  
23 jurisdiction to commence or proceed with any investigation of, or action or disciplinary  
24 proceeding against, the licensee or to render a decision suspending or revoking the license."

25 7. Section 4301 states, in pertinent part:

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



1 . . . .  
2 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit or  
3 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
4 whether the act is a felony or misdemeanor or not.

5 . . . .  
6 (l) The conviction of a crime substantially related to the qualifications, functions, and  
7 duties of a licensee under this chapter. . . .”

8 **REGULATORY PROVISION**

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

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

16 **COST RECOVERY**

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

20 **FIRST CAUSE FOR DISCIPLINE**

21 ***(Conviction of a Substantially Related Crimes)***

22 10. Respondent is subject to disciplinary action under sections 490, 4300 and 4301,  
23 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, in that,  
24 Respondent was convicted of a substantially related crime, as follows:

25 a. On January 31, 2013, in the matter of *The People of the State of California v. David*  
26 *Huynh*, (Super. Ct. Los Angeles County, 2012, No. 2JB10116), Respondent was convicted on his  
27 plea of *nolo contendere* to one misdemeanor count of violation of Vehicle Code section 2800.1(a)  
28 [evading a police officer]. The court sentenced Respondent to 3 years summary probation,

1 ordered him to complete a hospital and morgue program, to attend 52 weeks of psychological  
2 counseling, to pay fines and fees or complete 157 hours of community service, and terms and  
3 conditions.

4 b. The circumstances underlying the conviction are that on or about August 17, 2012,  
5 Respondent operated a motor vehicle and was stopped by the Los Angeles County Sheriff's  
6 Department for a traffic violation in the City of West Covina. Respondent exited the vehicle and  
7 demanded that the Sheriff deputies shoot him, and then returned to his vehicle and fled from  
8 deputies. West Covina Police officers, with lights and sirens activated, attempted to pull  
9 Respondent over. Respondent evaded and fled from numerous West Covina Police officers,  
10 California Highway Patrol officers, and a Los Angeles County Sheriff's Department helicopter,  
11 on surface streets and the 60 Freeway for a distance of approximately 40 miles, with a willful and  
12 wanton disregard for the safety of the motoring public and passersby. Respondent only stopped  
13 fleeing when his vehicle was stopped by officers in a PIT (pursuit intervention technique)  
14 maneuver which disabled Respondent's vehicle. Respondent exited the vehicle shouting "Just  
15 kill me! Kill me please." Respondent was subdued and arrested. Respondent admitted to officers  
16 that he went through several red lights, he knew several police vehicles were behind him with  
17 lights and sirens the entire time, and that it was his intention to go to "Mexico". Respondent was  
18 taken into custody. Respondent was placed on a 72 hour detention hold for evaluation and  
19 treatment based on his suicidal statements upon arrest.

20 **SECOND CAUSE FOR DISCIPLINE**

21 *(Act Involving Moral Turpitude, Dishonesty, or Deceit)*

22 11. Respondent is subject to disciplinary action under section 4301, subdivision (f) on the  
23 grounds of unprofessional conduct, in that, Respondent committed an act or acts involving moral  
24 turpitude, dishonesty, or deceit, in that, Respondent willfully evaded numerous law enforcement  
25 officials in their attempts to stop and apprehend him with their lights and sirens activated during a  
26 40 mile vehicle pursuit which endangered the lives of other motorists and passersby.  
27 Complainant refers to, and by reference incorporates, the allegations set forth in paragraph 10,  
28 subparagraphs (a) and (b), as though fully set forth herein.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**THIRD CAUSE FOR DISCIPLINE**

*(Actions Warranting Denial of License)*

12. Respondent has subjected his license to discipline pursuant to sections 4300 and 4301(p) of the Code, on the grounds of unprofessional conduct, in that, he committed acts which would warrant denial of a license as described above in paragraphs 10(a) and (b).

**FOURTH CAUSE FOR DISCIPLINE**

*(Violation of the Pharmacy Law)*

13. Respondent has subjected his license to discipline pursuant to sections 4300 and 4301(o) of the Code, for unprofessional conduct, in that, Respondent violated pharmacy laws when he committed acts as described above in paragraphs 10(a) and (b).

**PRIOR DISCIPLINE**

14. In order to determine the degree of discipline to be imposed against Respondent, Complainant alleges the following facts: In the Board Decision and Order dated April 5, 2006, effective March 6, 2006, in the disciplinary matter before the Board entitled "*In the Matter of the Accusation Against David Lee Huynh*," Case No. 2781, Respondent's original pharmacist license was suspended upon the effective date of the Decision and Order until the Pharmacists Recovery Program made a determination that Respondent was fit to practice safely and independently. In addition, Respondent's license was revoked, but the revocation was stayed, and Respondent's license was placed on probation for a period five (5) years on terms and conditions. The Decision and Order required the successful participation and completion of the Pharmacists Recovery Program, random drug screening, abstention from drugs and alcohol. A true and correct copy of the Decision and Order and Accusation Case No. 2781 is attached as Exhibit A.

**PRAYER**

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

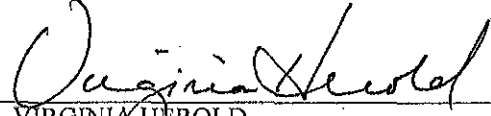
1. Revoking or suspending Original Pharmacist License No. RPH 52876 issued to David Lee Huynh;
2. Ordering David Lee Huynh to pay the Board the reasonable costs of the investigation

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

and enforcement of this case, pursuant to section 125.3; and

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

DATED: 10/17/14



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

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

In the Matter of the Accusation Against:

DAVID LEE HUYNH  
6251 Lena  
Woodland Hills, CA 91367

Pharmacist License No. RPH-52876

Respondent.

Case No. 2781

OAH No. L-2005070318

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, as its Decision in this matter.

This Decision shall become effective on April 5, 2006.

It is so ORDERED March 6, 2006.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

  
STANLEY W. GOLDENBERG  
Board President

1 BILL LOCKYER, Attorney General  
of the State of California  
2 SHARON F. COHEN, R.N.  
Supervising Deputy Attorney General  
3 BARRY G. THORPE, State Bar No. 126422  
Deputy Attorney General  
4 California Department of Justice  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-5845  
6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

13 **DAVID LEE HUYNH**  
6251 Lena  
Woodland Hills, CA 91367  
14 Pharmacist License No. 52876

15 Respondent.

Case No. 2781

OAH No. L-2005070318

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

16  
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
18 above-entitled proceedings that the following matters are true:

19 PARTIES

20 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of  
21 Pharmacy (Board), Department of Consumer Affairs. Complainant brought this action solely in  
22 her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the  
23 State of California, by Barry G. Thorpe, Deputy Attorney General.

24 2. Respondent DAVID LEE HUYNH (Respondent) is represented in this  
25 proceeding by attorney Herbert Weinberg, whose address is Van Etten Suzumoto & Becket LLP,  
26 1620 26<sup>th</sup> Street, Suite 6000 North, Santa Monica, CA 90404.

27 ///

28 ///







1 pharmacy nor do any act involving drug selection, selection of stock, manufacturing,  
2 compounding, dispensing or patient consultation; nor shall Respondent manage, administer, or  
3 be a consultant to any licensee of the Board, or have access to or control the ordering,  
4 manufacturing or dispensing of dangerous drugs or controlled substances.

5 Respondent shall not engage in any activity that requires the professional  
6 judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of  
7 pharmacy. Respondent shall not perform the duties of a pharmacy technician or an exempted for  
8 any entity licensed by the Board.

9 **2. Obey All Laws.** Respondent shall obey all state and federal laws and  
10 regulations substantially related to or governing the practice of pharmacy.

11 Respondent shall report any of the following occurrences to the Board, in writing,  
12 within 72 hours of such occurrence:

- 13 • an arrest or issuance of a criminal complaint for violation of any provision of the  
14 Pharmacy Law, state and federal food and drug laws, or state and federal  
15 controlled substances laws
- 16 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to  
17 any criminal complaint, information or indictment
- 18 • a conviction of any crime
- 19 • discipline, citation, or other administrative action filed by any state and federal  
20 agency which involves Respondent's license or which is related to the practice  
21 of pharmacy or the manufacturing, obtaining, handling or distribution or billing  
22 or charging for any drug, device or controlled substance.

23 **3. Reporting to the Board.** Respondent shall report to the Board  
24 quarterly. The report shall be made either in person or in writing, as directed. Respondent  
25 shall state under penalty of perjury whether there has been compliance with all the terms and  
26 conditions of probation. If the final probation report is **not** made as directed, probation shall  
27 be extended automatically until such time as the final report is made and accepted by the  
28 Board.

1                   4.     **Interview with the Board.** Upon receipt of reasonable notice,  
2 Respondent shall appear in person for interviews with the Board upon request at various  
3 intervals at a location to be determined by the Board. Failure to appear for a scheduled  
4 interview without prior notification to Board staff shall be considered a violation of probation.

5                   5.     **Cooperation with Board Staff.** Respondent shall cooperate with the  
6 Board's inspectional program and in the Board's monitoring and investigation of Respondent's  
7 compliance with the terms and conditions of his probation. Failure to comply shall be  
8 considered a violation of probation.

9                   6.     **Continuing Education.** Respondent shall provide evidence of efforts  
10 to maintain skill and knowledge as a pharmacist as directed by the Board.

11                  7.     **Notice to Employers.** Respondent shall notify all present and  
12 prospective employers of the decision in Accusation Case No.2781 and the terms, conditions  
13 and restrictions imposed on Respondent by the decision. Within 30 days of the effective date  
14 of this decision, and within 15 days of Respondent undertaking new employment, Respondent  
15 shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in  
16 writing acknowledging the employer has read the decision in Accusation Case No. 2781.

17                         If Respondent works for or is employed by or through a pharmacy employment  
18 service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at  
19 every pharmacy of the and terms conditions of the decision in Accusation Case No. 2781 in  
20 advance of the Respondent commencing work at each pharmacy.

21                         "Employment" within the meaning of this provision shall include any full-time, part-  
22 time, temporary, relief or pharmacy management service as a pharmacist, whether the  
23 Respondent is considered an employee or independent contractor.

24                   8.     **No Preceptorships, Supervision of Interns, Being Pharmacist-in-**  
25 **Charge (PIC), or Serving as a Consultant.** Respondent shall not supervise any intern  
26 pharmacist or perform any of the duties of a preceptor, nor shall Respondent be the  
27 pharmacist-in-charge of any entity licensed by the Board unless otherwise specified in this  
28 order.

1                   9.     **Reimbursement of Board Costs.** Respondent shall pay to the Board  
2 its costs of investigation and prosecution in the amount of \$5,000.00. Respondent shall make  
3 said payments as follows: Quarterly, in equal amounts, over the period of his probation.

4                   The filing of bankruptcy by Respondent shall not relieve Respondent of his  
5 responsibility to reimburse the Board its costs of investigation and prosecution.

6                   10.    **Probation Monitoring Costs.** Respondent shall pay the costs  
7 associated with probation monitoring as determined by the Board each and every year of  
8 probation. Such costs shall be payable to the Board at the end of each year of probation.  
9 Failure to pay such costs shall be considered a violation of probation.

10                  11.    **Status of License.** Respondent shall, at all times while on probation,  
11 maintain an active current license with the Board, including any period during which  
12 suspension or probation is tolled.

13                  If Respondent's license expires or is canceled by operation of law or otherwise,  
14 upon renewal or reapplication, Respondent's license shall be subject to all terms and  
15 conditions of this probation not previously satisfied.

16                  12.    **License Surrender while on Probation/Suspension.** Following the  
17 effective date of this decision, should Respondent cease practice due to retirement or health, or  
18 be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender  
19 his license to the Board for surrender. The Board shall have the discretion whether to grant  
20 the request for surrender or take any other action it deems appropriate and reasonable. Upon  
21 formal acceptance of the surrender of the license, Respondent will no longer be subject to the  
22 terms and conditions of probation.

23                  Upon acceptance of the surrender, Respondent shall relinquish his pocket  
24 license to the Board within 10 days of notification by the Board that the surrender is accepted.  
25 Respondent may not reapply for any license from the Board for three years from the effective  
26 date of the surrender. Respondent shall meet all requirements applicable to the license sought  
27 as of the date the application for that license is submitted to the Board.

28     ///

1                   13.    **Notification of Employment/Mailing Address Change.** Respondent  
2 shall notify the Board in writing within 10 days of any change of employment. Said  
3 notification shall include the reasons for leaving and/or the address of the new employer,  
4 supervisor or owner and work schedule if known. Respondent shall notify the Board in  
5 writing within 10 days of a change in name, mailing address or phone number.

6                   14.    **Tolling of Probation.** Should Respondent, regardless of residency, for  
7 any reason cease practicing pharmacy for a minimum of eighty (80) hours per calendar month  
8 in California, Respondent must notify the Board in writing within 10 days of cessation of the  
9 practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time  
10 shall not apply to the reduction of the probation period. It is a violation of probation for  
11 Respondent's probation to remain tolled pursuant to the provisions of this condition for a  
12 period exceeding three years.

13                    "Cessation of practice" means any period of time exceeding 30 days in which  
14 Respondent is not engaged in the practice of pharmacy as defined in Section 4052 of  
15 the Business and Professions Code.

16                   Respondent shall work at least 40 hours in each calendar month as a pharmacist  
17 and at least an average of 80 hours per month in any six consecutive months. Failure to do so  
18 will be a violation of probation. If Respondent has not complied with this condition during  
19 the probationary term, and Respondent has presented sufficient documentation of his good  
20 faith efforts to comply with this condition, and if no other conditions have been violated, the  
21 Board, in its discretion, may grant an extension of Respondent's probation period up to one  
22 year without further hearing in order to comply with this condition.

23                   15.    **Violation of Probation.** If Respondent violates probation in any  
24 respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke  
25 probation and carry out the disciplinary order which was stayed. If a petition to revoke  
26 probation or an accusation is filed against Respondent during probation, the Board shall have  
27 continuing jurisdiction and the period of probation shall be extended, until the petition to  
28 revoke probation or accusation is heard and decided.

1           If Respondent has not complied with any term or condition of probation, the  
2 Board shall have continuing jurisdiction over Respondent, and probation shall automatically  
3 be extended until all terms and conditions have been satisfied or the Board has taken other  
4 action as deemed appropriate to treat the failure to comply as a violation of probation, to  
5 terminate probation, and to impose the penalty which was stayed.

6           **16. Completion of Probation.** Upon successful completion of probation,  
7 Respondent's license will be fully restored.

8           **17. Rehabilitation Program - Pharmacists Recovery Program (PRP).**

9           Within 30 days of the effective date of this decision, Respondent shall contact  
10 the Pharmacists Recovery Program for evaluation and shall successfully participate in and  
11 complete the treatment contract and any subsequent addendums as recommended and  
12 provided by the PRP and as approved by the Board. The costs for PRP participation shall be  
13 borne by the Respondent.

14           If Respondent is currently enrolled in the PRP, said participation is now  
15 mandatory and is no longer considered a self-referral under Business and Professions Code  
16 section 4363, as of the effective date of this decision. Respondent shall successfully  
17 participate in and complete his current contract and any subsequent addendums with the PRP.  
18 Probation shall be automatically extended until Respondent successfully completes his  
19 treatment contract. Any person terminated from the program shall be automatically suspended  
20 upon notice by the Board. Respondent may not resume the practice of pharmacy until notified  
21 by the Board in writing. The Board shall retain jurisdiction to institute action to terminate  
22 probation for any violation of this term.

23           **18. Random Drug Screening.** Respondent, at his own expense, shall  
24 participate in random testing, including but not limited to biological fluid testing (urine,  
25 blood), breathalyzer, hair follicle testing, or a drug screening program approved by the Board.  
26 The length of time shall be for the entire probation period and the frequency of testing will be  
27 determined by the Board. At all times Respondent shall fully cooperate with the Board, and  
28 shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics,

1 hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as  
 2 directed shall constitute a violation of probation. Any confirmed positive drug test shall result  
 3 in the immediate suspension of practice by Respondent. Respondent may not resume the  
 4 practice of pharmacy until notified by the Board in writing.

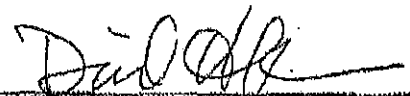
5 19. **Abstain from Drugs and Alcohol Use.** Respondent shall completely  
 6 abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their  
 7 associated paraphernalia except when the drugs are lawfully prescribed by a licensed  
 8 practitioner as part of a documented medical treatment. Upon request of the Board,  
 9 Respondent shall provide documentation from the licensed practitioner that the prescription  
 10 was legitimately issued and is a necessary part of the treatment of the Respondent.

11 20. **No Ownership of Premises.** Respondent shall not own, have any legal  
 12 or beneficial interest in, or serve as a manager, administrator, member, officer, director,  
 13 associate, or partner of any business, firm, partnership, or corporation currently, or hereinafter  
 14 licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any  
 15 entity licensed by the Board within 90 days following the effective date of this decision and  
 16 shall immediately thereafter provide written proof thereof to the Board.

17  
 18 **ACCEPTANCE**

19 I have carefully read the above Stipulated Settlement and Disciplinary Order  
 20 and have fully discussed it with my attorney, Herbert Weinberg, Esq. I understand the  
 21 stipulation and the effect it will have on my pharmacist license. I enter into this Stipulated  
 22 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
 23 bound by the Decision and Order of the Board.

24 DATED: 12/22/05

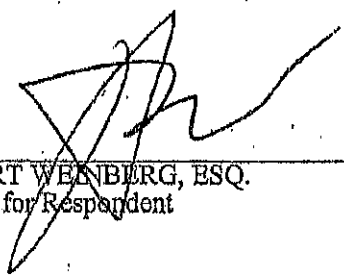
25  
 26   
 27 DAVID LEE HUYNH  
 Respondent

28 1/1

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I have read and fully discussed with Respondent DAVID LEE HUYNH the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 12/23/05



HERBERT WEISBERG, ESQ.  
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board.

DATED: 12-27-05

BILL LOCKYER, Attorney General  
of the State of California



BARRY G. THORPE  
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: LA2004601082  
60118245.wpd

**Exhibit A**  
**Accusation No. 2781**



1 BILL LOCKYER, Attorney General  
of the State of California  
2 DESIREE PHILLIPS, State Bar No. 157464  
Deputy Attorney General  
3 California Department of Justice  
300 So. Spring Street, Suite 1702  
4 Los Angeles, CA 90013  
Telephone: (213) 897-2578  
5 Facsimile: (213) 897-2804  
6 Attorneys for Complainant

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2781

12 **DAVID LEE HUYNH**  
6251 Lena  
13 Woodland Hills, CA 91367

OAH No. L-2004080387

14 Pharmacist License No. RPH-52876

**ACCUSATION**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Patricia F. Harris (Complainant) brings this 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 5, 2001, the Board of Pharmacy (Board) issued  
23 Pharmacist License No. RPH-52876 to David Lee Huynh (Respondent). The pharmacist license  
24 was in full force and effect at all times relevant to the charges brought herein and will expire on  
25 October 31, 2006, unless renewed.

26 ///

27 ///

28 ///

JURISDICTION

1  
2           3.     This Accusation is brought before the Board, under the authority of the  
3 following laws. All section references are to the Business and Professions Code (Code) unless  
4 otherwise indicated.

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

9           5.     Section 490 of the Code states:

10           "A board may suspend or revoke a license on the ground that the licensee has been  
11 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties  
12 of the business or profession for which the license was issued. A conviction within the meaning  
13 of this section means a plea or verdict of guilty or a conviction following a plea of nolo  
14 contendere. Any action which a board is permitted to take following the establishment of a  
15 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has  
16 been affirmed on appeal, or when an order granting probation is made suspending the imposition  
17 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the  
18 Penal Code."

19           6.     Section 4022 of the Code states:

20           "Dangerous drug' or 'dangerous device' means any drug or device unsafe for  
21 self-use, except veterinary drugs that are labeled as such, and includes the following:

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

24           "(b) Any device that bears the statement: "Caution: federal law restricts this  
25 device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar import, the  
26 blank to be filled in with the designation of the practitioner licensed to use or order use of the  
27 device.

28     ///

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

3                   7.       Section 4059, subdivision (a), of the Code states:

4                   "A person may not furnish any dangerous drug, except upon the prescription of a  
5 physician, dentist, podiatrist, optometrist, or veterinarian. A person may not furnish any  
6 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, or  
7 veterinarian."

8                   8.       Section 4060 of the Code states, in pertinent part:

9                   "No person shall possess any controlled substance, except that furnished to a  
10 person upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian . . .  
11 This section shall not apply to the possession of any controlled substance by a manufacturer,  
12 wholesaler, pharmacy, physician, podiatrist, dentist, optometrist, veterinarian, certified nurse-  
13 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled  
14 with the name and address of the supplier or producer. . . ."

15                   9.       Section 4300 of the Code states, in pertinent part:

16                   "(a) Every license issued may be suspended or revoked.

17                   "(b) The board shall discipline the holder of any license issued by the board,  
18 whose default has been entered or whose case has been heard by the board and found guilty, by  
19 any of the following methods:

20                   "(1) Suspending judgment.

21                   "(2) Placing him or her upon probation.

22                   "(3) Suspending his or her right to practice for a period not exceeding one year.

23                   "(4) Revoking his or her license.

24                   "(5) Taking any other action in relation to disciplining him or her as the board in  
25 its discretion may deem proper.

26                   . . .

27                   "(e) The proceedings under this article shall be conducted in accordance with  
28 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code,

1 and the board shall have all the powers granted therein. The action shall be final, except that the  
2 propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the  
3 Code of Civil Procedure."

4 10. Section 4301 of the Code states, in pertinent part:

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

9 ...

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

15 ...

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

18 ...

19 "(l) The conviction of a crime substantially related to the qualifications, functions,  
20 and duties of a licensee under this chapter. . . .

21 ...

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

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

27 ///

28 ///

1           11.     Section 4311, subdivision (c), of the Code states:

2            "In addition to any suspension under subdivision (a), the board shall also suspend  
3 any license issued by the board, or the holder thereof, if the board determines that the felony  
4 conviction of the holder of the license is substantially related to the qualifications, functions, or  
5 duties of the licensee."

6           12.     Section 4369, subdivision (c), of the Code states:

7            "Participation in a program under this article shall not be a defense to any  
8 disciplinary action that may be taken by the board. Further, no provision of this article shall  
9 preclude the board from commencing disciplinary action against a licensee who is terminated  
10 from a program under this article."

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

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

18           14.     Health & Safety Code section 11170 states that, "[n]o person shall  
19 prescribe, administer, or furnish a controlled substance for himself."

20           15.     Health and Safety Code section 11350, subdivision (a), states:

21            "Except as otherwise provided in this division, every person who possesses. . . (2)  
22 any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon  
23 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in  
24 this state, shall be punished by imprisonment in the state prison."

25           16.     Section 125.3, subdivision (a), of the Code states, in pertinent part:

26            "Except as otherwise provided by law, in any order issued in resolution of a  
27 disciplinary proceeding before any board within the department . . . the board may request the  
28 administrative law judge to direct a licentiate found to have committed a violation or violations

1 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
2 enforcement of the case."

3 17. **DANGEROUS DRUGS / CONTROLLED SUBSTANCES**

4 a. "Ambien," a brand name for zolpidem tartrate, a nonbarbiturate hypnotic,  
5 is a Schedule IV controlled substance as designated by Health and Safety Code section  
6 11057(d)(32), and is categorized as a dangerous drug pursuant to Business and Professions Code  
7 section 4022.

8 b. "Norco," a brand name for hydrocodone bitartrate with acetaminophen, is  
9 a Schedule III controlled substance pursuant to Health and Safety Code Section 11056,  
10 subdivision (e)(4), and is categorized as a dangerous drug pursuant to Business and Professions  
11 Code section 4022.

12 c. "Soma," a brand name for carisoprodol, is categorized as a dangerous drug  
13 pursuant to section 4022 of the Code.

14 d. "Vicodin" or "Vicodin ES," a brand name for hydrocodone bitartrate with  
15 acetaminophen, is a Schedule III controlled substance pursuant to Health and Safety Code  
16 Section 11056, subdivision (e)(4), and is categorized as a dangerous drug pursuant to Business  
17 and Professions Code section 4022.

18 **FIRST CAUSE FOR DISCIPLINE**

19 *(Conviction of Substantially Related Crimes)*

20 18. Respondent has subjected his license to discipline pursuant to sections  
21 4300, 4301(l), 4311(c), and 490 of the Code, in conjunction with California Code of Regulations,  
22 title 16, section 1770, on the grounds of unprofessional conduct, in that, Respondent was  
23 convicted of crimes substantially related to the qualifications, functions or duties of a pharmacist,  
24 as follows:

25 a. On or about March 28, 2003, Respondent was convicted, on a plea of nolo  
26 contendere, of one count of violating Vehicle Code section 23152(a) (driving under the influence  
27 of alcohol or drugs), a misdemeanor, in the Los Angeles Municipal Court, Van Nuys Judicial  
28 District, Case No. 3VN00434, entitled *People v. David Huynh*. The circumstances surrounding

1 the conviction are that on or about January 21, 2003, Respondent was arrested by the West Los  
2 Angeles Police Department after he rear-ended another vehicle. The arresting officers noted that  
3 Respondent's speech was slow and deliberate, he had poor balance, and was unable to perform  
4 field sobriety tests as demonstrated. Respondent's vehicle was searched by the West Los  
5 Angeles Police Department officers, and a clear plastic baggie containing numerous tablets was  
6 discovered. Respondent admitted to one of the arresting officers that the tablets were his, and  
7 that they were Vicodin, Soma and Ambien.

8           b.       On or about June 6, 2003, Respondent was convicted on his plea of guilty  
9 of one count of violating Health and Safety Code section 11350(a) (possession of narcotic  
10 controlled substance, to wit: opiate (hydrocodone)), a felony, in the Los Angeles Municipal  
11 Court, Beverly Hills Judicial District, Case No. SA048734, entitled *People v. David Huynh*.  
12 Entry of judgment was deferred for 24 months. The circumstances surrounding the conviction  
13 are that on or about March 9, 2003, Respondent was arrested by the California Highway Patrol  
14 (CHP) after he rear-ended a vehicle. CHP officers noted that Respondent's gait and balance were  
15 unsteady, his speech was slurred, and he seemed disoriented. Respondent was unable to perform  
16 field sobriety tests as demonstrated. Subsequently, Respondent was searched and 3 pills were  
17 found in his left rear pants pocket. Two of the pills were identified as Soma, and the other pill  
18 was identified as Vicodin. Respondent submitted a urine sample, which tested positive for  
19 opiates.

20           c.       On or about October 24, 2003, Respondent was convicted on his plea of  
21 nolo contendere of one count of violating Vehicle Code section 23152(a) (driving under the  
22 influence of alcohol/drugs), a misdemeanor, in the Los Angeles Municipal Court, Van Nuys  
23 Judicial District, Case No. 3VN01574, entitled *People v. David Huynh*. The circumstances  
24 surrounding the conviction are that on or about April 1, 2003, Respondent was driving a motor  
25 vehicle while under the influence of an alcoholic beverage or a drug.

26           d.       On or about October 24, 2003, Respondent was convicted on his plea of  
27 nolo contendere of one count of violating Vehicle Code section 23152(a) (driving under the  
28 influence of alcohol/drugs), a misdemeanor, in the Los Angeles Municipal Court, Van Nuys

1 Judicial District, Case No. 3VN02155, entitled *People v. David Huynh*. The circumstances  
2 surrounding the conviction are that on or about May 2, 2003, Respondent was arrested by  
3 California Highway Patrol officers following a solo roll-over collision. Approximately 30  
4 prescription pills (8 Vicodin, 2 Norco, 7 Ambien, and 13 Soma) were found loose throughout  
5 Respondent's vehicle by a CHP officer. Respondent admitted to one of the arresting officers that  
6 he had approximately 47 pills (20 Vicodin, 15 Soma, 10 Ambien, and 2 Norco) loose in the  
7 glove box of his vehicle. Respondent was able to provide a prescription for the Vicodin ES pills,  
8 only. Respondent admitted to buying the Norco pills in Mexico.

9 **SECOND CAUSE FOR DISCIPLINE**

10 *(Violation of a Statute Regulating Controlled Substances/Dangerous Drugs)*

11 19. Respondent has subjected his license to discipline pursuant to sections  
12 4300 and 4301(j) of the Code, on the grounds of unprofessional conduct, in that Respondent  
13 violated Health and Safety Code section 11350(a), a statute regulating controlled substances and  
14 dangerous drugs, as described above in paragraph 18(b).

15 **THIRD CAUSE FOR DISCIPLINE**

16 *(Possession of Dangerous Drugs/Controlled Substances Without a Prescription)*

17 20. Respondent is subject to disciplinary action under sections 4300, and  
18 4301(j) of the Code, on the grounds of unprofessional conduct for violating section 4060 of the  
19 Code, in that Respondent possessed dangerous drugs/controlled substances without a prescription  
20 as more fully set forth above in paragraph 18.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 *(Furnish, Administer Controlled Substances to Himself)*

23 21. Respondent has subjected his license to discipline pursuant to sections  
24 4300, 4301(h), and 4301(j) of the Code, in conjunction with Health and Safety Code section  
25 11170, in that Respondent furnished and administered controlled substances to himself, as  
26 described above in paragraph 18.

27 ///

28 ///



1 **FIFTH CAUSE FOR DISCIPLINE**

2 *(Furnish Dangerous Drugs to Himself)*

3 22. Respondent is subject to disciplinary action under sections 4300 and 4059  
4 of the Code, on the grounds of unprofessional conduct, in that Respondent furnished dangerous  
5 drugs to himself, without a prescription, as set forth in paragraph 18.

6 **SIXTH CAUSE FOR DISCIPLINE**

7 *(Use of Drugs in Dangerous/Injurious Manner)*

8 23. Respondent is subject to disciplinary action under sections 4300 and  
9 4301(h) of the Code, on the grounds of unprofessional conduct, in that Respondent administered  
10 to himself dangerous drugs to an extent or in a manner dangerous or injurious to himself, to any  
11 person, or to the public, as more fully set forth above in paragraph 18.

12 **SEVENTH CAUSE FOR DISCIPLINE**

13 *(Actions Warranting Denial of License)*

14 24. Respondent has subjected his license to discipline pursuant to sections  
15 4300 and 4301(p) of the Code, on the grounds of unprofessional conduct, in that he committed  
16 acts which would warrant denial of a license as described above in paragraphs 18 - 23.

17 **EIGHTH CAUSE FOR DISCIPLINE**

18 *(Violation of the Pharmacy Law)*

19 25. Respondent has subjected his license to discipline pursuant to sections  
20 4300 and 4301(o) of the Code, for unprofessional conduct, in that Respondent violated  
21 pharmacy laws when he committed acts as described above in paragraphs 18 - 24.

22 **PRAYER**

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

- 25 1. Revoking or suspending Pharmacist License No. RPH-52876, issued to  
26 David Lee Huynh;
- 27 2. Ordering David Lee Huynh to pay the Board of Pharmacy the reasonable  
28 costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

DATED: 2/22/05

P. J. Harris  
PATRICIA F. HARRIS  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
Complainant

# **Exhibit B**

**Decision and Order**

**Board of Pharmacy Case No. 2781**

1 BILL LOCKYER, Attorney General  
of the State of California  
2 SHARON F. COHEN, R.N.  
Supervising Deputy Attorney General  
3 BARRY G. THORPE, State Bar No. 126422  
Deputy Attorney General  
4 California Department of Justice  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-5845  
6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

13 **DAVID LEE HUYNH**  
6251 Lena  
Woodland Hills, CA 91367  
14 Pharmacist License No. 52876

15 Respondent.

Case No. 2781

OAH No. L-2005070318

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

16  
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the  
18 above-entitled proceedings that the following matters are true:

19 PARTIES

20 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of  
21 Pharmacy (Board), Department of Consumer Affairs. Complainant brought this action solely in  
22 her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the  
23 State of California, by Barry G. Thorpe, Deputy Attorney General.

24 2. Respondent DAVID LEE HUYNH (Respondent) is represented in this  
25 proceeding by attorney Herbert Weinberg, whose address is Van Etten Suzumoto & Becket LLP,  
26 1620 26<sup>th</sup> Street, Suite 6000 North, Santa Monica, CA 90404.

27 ///

28 ///





1 pharmacy nor do any act involving drug selection, selection of stock, manufacturing,  
2 compounding, dispensing or patient consultation; nor shall Respondent manage, administer, or  
3 be a consultant to any licensee of the Board, or have access to or control the ordering,  
4 manufacturing or dispensing of dangerous drugs or controlled substances.

5 Respondent shall not engage in any activity that requires the professional  
6 judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of  
7 pharmacy. Respondent shall not perform the duties of a pharmacy technician or an exempted for  
8 any entity licensed by the Board.

9 2. **Obey All Laws.** Respondent shall obey all state and federal laws and  
10 regulations substantially related to or governing the practice of pharmacy.

11 Respondent shall report any of the following occurrences to the Board, in writing,  
12 within 72 hours of such occurrence:

- 13 • an arrest or issuance of a criminal complaint for violation of any provision of the  
14 Pharmacy Law, state and federal food and drug laws, or state and federal  
15 controlled substances laws
- 16 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to  
17 any criminal complaint, information or indictment
- 18 • a conviction of any crime
- 19 • discipline, citation, or other administrative action filed by any state and federal  
20 agency which involves Respondent's license or which is related to the practice  
21 of pharmacy or the manufacturing, obtaining, handling or distribution or billing  
22 or charging for any drug, device or controlled substance.

23 3. **Reporting to the Board.** Respondent shall report to the Board  
24 quarterly. The report shall be made either in person or in writing, as directed. Respondent  
25 shall state under penalty of perjury whether there has been compliance with all the terms and  
26 conditions of probation. If the final probation report **is not** made as directed, probation shall  
27 be extended automatically until such time as the final report is made and accepted by the  
28 Board.

1                   4.       **Interview with the Board.** Upon receipt of reasonable notice,  
2 Respondent shall appear in person for interviews with the Board upon request at various  
3 intervals at a location to be determined by the Board. Failure to appear for a scheduled  
4 interview without prior notification to Board staff shall be considered a violation of probation.

5                   5.       **Cooperation with Board Staff.** Respondent shall cooperate with the  
6 Board's inspectional program and in the Board's monitoring and investigation of Respondent's  
7 compliance with the terms and conditions of his probation. Failure to comply shall be  
8 considered a violation of probation.

9                   6.       **Continuing Education.** Respondent shall provide evidence of efforts  
10 to maintain skill and knowledge as a pharmacist as directed by the Board.

11                  7.       **Notice to Employers.** Respondent shall notify all present and  
12 prospective employers of the decision in Accusation Case No.2781 and the terms, conditions  
13 and restrictions imposed on Respondent by the decision. Within 30 days of the effective date  
14 of this decision, and within 15 days of Respondent undertaking new employment, Respondent  
15 shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in  
16 writing acknowledging the employer has read the decision in Accusation Case No. 2781.

17                  If Respondent works for or is employed by or through a pharmacy employment  
18 service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at  
19 every pharmacy of the and terms conditions of the decision in Accusation Case No. 2781 in  
20 advance of the Respondent commencing work at each pharmacy.

21                  "Employment" within the meaning of this provision shall include any full-time, part-  
22 time, temporary, relief or pharmacy management service as a pharmacist, whether the  
23 Respondent is considered an employee or independent contractor.

24                  8.       **No Preceptorships, Supervision of Interns, Being Pharmacist-in-  
25 Charge (PIC), or Serving as a Consultant.** Respondent shall not supervise any intern  
26 pharmacist or perform any of the duties of a preceptor, nor shall Respondent be the  
27 pharmacist-in-charge of any entity licensed by the Board unless otherwise specified in this  
28 order.



1           9.       **Reimbursement of Board Costs.** Respondent shall pay to the Board  
2 its costs of investigation and prosecution in the amount of \$5,000.00. Respondent shall make  
3 said payments as follows: Quarterly, in equal amounts, over the period of his probation.

4           The filing of bankruptcy by Respondent shall not relieve Respondent of his  
5 responsibility to reimburse the Board its costs of investigation and prosecution.

6           10.       **Probation Monitoring Costs.** Respondent shall pay the costs  
7 associated with probation monitoring as determined by the Board each and every year of  
8 probation. Such costs shall be payable to the Board at the end of each year of probation.  
9 Failure to pay such costs shall be considered a violation of probation.

10          11.       **Status of License.** Respondent shall, at all times while on probation,  
11 maintain an active current license with the Board, including any period during which  
12 suspension or probation is tolled.

13          If Respondent's license expires or is canceled by operation of law or otherwise,  
14 upon renewal or reapplication, Respondent's license shall be subject to all terms and  
15 conditions of this probation not previously satisfied.

16          12.       **License Surrender while on Probation/Suspension.** Following the  
17 effective date of this decision, should Respondent cease practice due to retirement or health, or  
18 be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender  
19 his license to the Board for surrender. The Board shall have the discretion whether to grant  
20 the request for surrender or take any other action it deems appropriate and reasonable. Upon  
21 formal acceptance of the surrender of the license, Respondent will no longer be subject to the  
22 terms and conditions of probation.

23          Upon acceptance of the surrender, Respondent shall relinquish his pocket  
24 license to the Board within 10 days of notification by the Board that the surrender is accepted.  
25 Respondent may not reapply for any license from the Board for three years from the effective  
26 date of the surrender. Respondent shall meet all requirements applicable to the license sought  
27 as of the date the application for that license is submitted to the Board.

28       ///

1                   13.     **Notification of Employment/Mailing Address Change.** Respondent  
2 shall notify the Board in writing within 10 days of any change of employment. Said  
3 notification shall include the reasons for leaving and/or the address of the new employer,  
4 supervisor or owner and work schedule if known. Respondent shall notify the Board in  
5 writing within 10 days of a change in name, mailing address or phone number.

6                   14.     **Tolling of Probation.** Should Respondent, regardless of residency, for  
7 any reason cease practicing pharmacy for a minimum of eighty (80) hours per calendar month  
8 in California, Respondent must notify the Board in writing within 10 days of cessation of the  
9 practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time  
10 shall not apply to the reduction of the probation period. It is a violation of probation for  
11 Respondent's probation to remain tolled pursuant to the provisions of this condition for a  
12 period exceeding three years.

13                   “Cessation of practice” means any period of time exceeding 30 days in which  
14 Respondent is not engaged in the practice of pharmacy as defined in Section 4052 of  
15 the Business and Professions Code.

16                   Respondent shall work at least 40 hours in each calendar month as a pharmacist  
17 and at least an average of 80 hours per month in any six consecutive months. Failure to do so  
18 will be a violation of probation. If Respondent has not complied with this condition during  
19 the probationary term, and Respondent has presented sufficient documentation of his good  
20 faith efforts to comply with this condition, and if no other conditions have been violated, the  
21 Board, in its discretion, may grant an extension of Respondent’s probation period up to one  
22 year without further hearing in order to comply with this condition.

23                   15.     **Violation of Probation.** If Respondent violates probation in any  
24 respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke  
25 probation and carry out the disciplinary order which was stayed. If a petition to revoke  
26 probation or an accusation is filed against Respondent during probation, the Board shall have  
27 continuing jurisdiction and the period of probation shall be extended, until the petition to  
28 revoke probation or accusation is heard and decided.

1                   If Respondent has not complied with any term or condition of probation, the  
2 Board shall have continuing jurisdiction over Respondent, and probation shall automatically  
3 be extended until all terms and conditions have been satisfied or the Board has taken other  
4 action as deemed appropriate to treat the failure to comply as a violation of probation, to  
5 terminate probation, and to impose the penalty which was stayed.

6                   16.     **Completion of Probation.** Upon successful completion of probation,  
7 Respondent's license will be fully restored.

8                   17.     **Rehabilitation Program - Pharmacists Recovery Program (PRP).**

9                   Within 30 days of the effective date of this decision, Respondent shall contact  
10 the Pharmacists Recovery Program for evaluation and shall successfully participate in and  
11 complete the treatment contract and any subsequent addendums as recommended and  
12 provided by the PRP and as approved by the Board. The costs for PRP participation shall be  
13 borne by the Respondent.

14                   If Respondent is currently enrolled in the PRP, said participation is now  
15 mandatory and is no longer considered a self-referral under Business and Professions Code  
16 section 4363, as of the effective date of this decision. Respondent shall successfully  
17 participate in and complete his current contract and any subsequent addendums with the PRP.  
18 Probation shall be automatically extended until Respondent successfully completes his  
19 treatment contract. Any person terminated from the program shall be automatically suspended  
20 upon notice by the Board. Respondent may not resume the practice of pharmacy until notified  
21 by the Board in writing. The Board shall retain jurisdiction to institute action to terminate  
22 probation for any violation of this term.

23                   18.     **Random Drug Screening.** Respondent, at his own expense, shall  
24 participate in random testing, including but not limited to biological fluid testing (urine,  
25 blood), breathalyzer, hair follicle testing, or a drug screening program approved by the Board.  
26 The length of time shall be for the entire probation period and the frequency of testing will be  
27 determined by the Board. At all times Respondent shall fully cooperate with the Board, and  
28 shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics,

1 hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as  
 2 directed shall constitute a violation of probation. Any confirmed positive drug test shall result:  
 3 in the immediate suspension of practice by Respondent. Respondent may not resume the  
 4 practice of pharmacy until notified by the Board in writing.

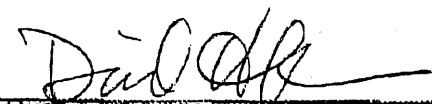
5 19. **Abstain from Drugs and Alcohol Use.** Respondent shall completely  
 6 abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their  
 7 associated paraphernalia except when the drugs are lawfully prescribed by a licensed  
 8 practitioner as part of a documented medical treatment. Upon request of the Board,  
 9 Respondent shall provide documentation from the licensed practitioner that the prescription  
 10 was legitimately issued and is a necessary part of the treatment of the Respondent.

11 20. **No Ownership of Premises.** Respondent shall not own, have any legal  
 12 or beneficial interest in, or serve as a manager, administrator, member, officer, director,  
 13 associate, or partner of any business, firm, partnership, or corporation currently or hereinafter  
 14 licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any  
 15 entity licensed by the Board within 90 days following the effective date of this decision and  
 16 shall immediately thereafter provide written proof thereof to the Board.

17  
 18 **ACCEPTANCE**

19 I have carefully read the above Stipulated Settlement and Disciplinary Order  
 20 and have fully discussed it with my attorney, Herbert Weinberg, Esq. I understand the  
 21 stipulation and the effect it will have on my pharmacist license. I enter into this Stipulated  
 22 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
 23 bound by the Decision and Order of the Board.

24 DATED: 12/22/05

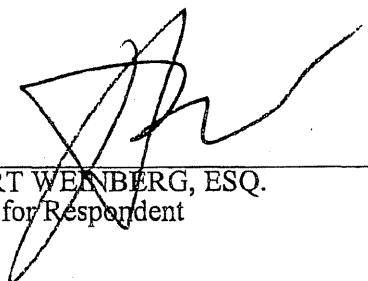
25  
 26   
 27 DAVID LEE HUYNH  
 Respondent

28 !!!

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I have read and fully discussed with Respondent DAVID LEE HUYNH the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 12/23/05



HERBERT WEINBERG, ESQ.  
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board.

DATED: 11-27-05

BILL LOCKYER, Attorney General  
of the State of California



BARRY G. THORPE  
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: LA2004601082  
60118245.wpd

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

In the Matter of the Accusation Against:

**DAVID LEE HUYNH**  
6251 Lena  
Woodland Hills, CA 91367

Pharmacist License No. RPH-52876

Respondent.

Case No. 2781

OAH No. L-2005070318

**DECISION AND ORDER**


The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, as its Decision in this matter.

This Decision shall become effective on April 5, 2006.

It is so ORDERED March 6, 2006.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

  
\_\_\_\_\_  
STANLEY W. GOLDENBERG  
Board President

**Exhibit A**  
**Accusation No. 2781**

1 BILL LOCKYER, Attorney General  
of the State of California  
2 DESIREE PHILLIPS, State Bar No. 157464  
Deputy Attorney General  
3 California Department of Justice  
300 So. Spring Street, Suite 1702  
4 Los Angeles, CA 90013  
Telephone: (213) 897-2578  
5 Facsimile: (213) 897-2804

6 Attorneys for Complainant

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2781

12 **DAVID LEE HUYNH**  
6251 Lena  
13 Woodland Hills, CA 91367

OAH No. L-2004080387

14 Pharmacist License No. RPH-52876

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

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Patricia F. Harris (Complainant) brings this 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 5, 2001, the Board of Pharmacy (Board) issued  
23 Pharmacist License No. RPH-52876 to David Lee Huynh (Respondent). The pharmacist license  
24 was in full force and effect at all times relevant to the charges brought herein and will expire on  
25 October 31, 2006, unless renewed.

26 ///

27 ///

28 ///



**JURISDICTION**

1  
2           3.       This Accusation is brought before the Board, under the authority of the  
3 following laws. All section references are to the Business and Professions Code (Code) unless  
4 otherwise indicated.

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

9           5.       Section 490 of the Code states:

10           "A board may suspend or revoke a license on the ground that the licensee has been  
11 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties  
12 of the business or profession for which the license was issued. A conviction within the meaning  
13 of this section means a plea or verdict of guilty or a conviction following a plea of nolo  
14 contendere. Any action which a board is permitted to take following the establishment of a  
15 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has  
16 been affirmed on appeal, or when an order granting probation is made suspending the imposition  
17 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the  
18 Penal Code."

19           6.       Section 4022 of the Code states:

20           "Dangerous drug' or 'dangerous device' means any drug or device unsafe for  
21 self-use, except veterinary drugs that are labeled as such, and includes the following:

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

24           "(b) Any device that bears the statement: "Caution: federal law restricts this  
25 device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar import, the  
26 blank to be filled in with the designation of the practitioner licensed to use or order use of the  
27 device.

28    ///

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

3                   7.       Section 4059, subdivision (a), of the Code states:

4                   "A person may not furnish any dangerous drug, except upon the prescription of a  
5 physician, dentist, podiatrist, optometrist, or veterinarian. A person may not furnish any  
6 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, or  
7 veterinarian."

8                   8.       Section 4060 of the Code states, in pertinent part:

9                   "No person shall possess any controlled substance, except that furnished to a  
10 person upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian . . .  
11 This section shall not apply to the possession of any controlled substance by a manufacturer,  
12 wholesaler, pharmacy, physician, podiatrist, dentist, optometrist, veterinarian, certified nurse-  
13 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled  
14 with the name and address of the supplier or producer. . . ."

15                  9.       Section 4300 of the Code states, in pertinent part:

16                  "(a) Every license issued may be suspended or revoked.

17                  "(b) The board shall discipline the holder of any license issued by the board,  
18 whose default has been entered or whose case has been heard by the board and found guilty, by  
19 any of the following methods:

20                  "(1) Suspending judgment.

21                  "(2) Placing him or her upon probation.

22                  "(3) Suspending his or her right to practice for a period not exceeding one year.

23                  "(4) Revoking his or her license.

24                  "(5) Taking any other action in relation to disciplining him or her as the board in  
25 its discretion may deem proper.

26                  . . .

27                  "(e) The proceedings under this article shall be conducted in accordance with  
28 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code,

1 and the board shall have all the powers granted therein. The action shall be final, except that the  
2 propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the  
3 Code of Civil Procedure."

4 10. Section 4301 of the Code states, in pertinent part:

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

9 ...

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

15 ...

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

18 ...

19 "(l) The conviction of a crime substantially related to the qualifications, functions,  
20 and duties of a licensee under this chapter. . . .

21 ...

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

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

27 ///

28 ///

1           11.     Section 4311, subdivision (c), of the Code states:

2            "In addition to any suspension under subdivision (a), the board shall also suspend  
3 any license issued by the board, or the holder thereof, if the board determines that the felony  
4 conviction of the holder of the license is substantially related to the qualifications, functions, or  
5 duties of the licensee."

6           12.     Section 4369, subdivision (c), of the Code states:

7            "Participation in a program under this article shall not be a defense to any  
8 disciplinary action that may be taken by the board. Further, no provision of this article shall  
9 preclude the board from commencing disciplinary action against a licensee who is terminated  
10 from a program under this article."

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

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

18          14.     Health & Safety Code section 11170 states that, "[n]o person shall  
19 prescribe, administer, or furnish a controlled substance for himself."

20          15.     Health and Safety Code section 11350, subdivision (a), states:

21          "Except as otherwise provided in this division, every person who possesses. . . (2)  
22 any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon  
23 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in  
24 this state, shall be punished by imprisonment in the state prison."

25          16.     Section 125.3, subdivision (a), of the Code states, in pertinent part:

26          "Except as otherwise provided by law, in any order issued in resolution of a  
27 disciplinary proceeding before any board within the department . . . the board may request the  
28 administrative law judge to direct a licentiate found to have committed a violation or violations

1 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
2 enforcement of the case."

3 17. **DANGEROUS DRUGS / CONTROLLED SUBSTANCES**

4 a. "Ambien," a brand name for zolpidem tartrate, a nonbarbiturate hypnotic,  
5 is a Schedule IV controlled substance as designated by Health and Safety Code section  
6 11057(d)(32), and is categorized as a dangerous drug pursuant to Business and Professions Code  
7 section 4022.

8 b. "Norco," a brand name for hydrocodone bitartrate with acetaminophen, is  
9 a Schedule III controlled substance pursuant to Health and Safety Code Section 11056,  
10 subdivision (e)(4), and is categorized as a dangerous drug pursuant to Business and Professions  
11 Code section 4022.

12 c. "Soma," a brand name for carisoprodol, is categorized as a dangerous drug  
13 pursuant to section 4022 of the Code.

14 d. "Vicodin" or "Vicodin ES," a brand name for hydrocodone bitartrate with  
15 acetaminophen, is a Schedule III controlled substance pursuant to Health and Safety Code  
16 Section 11056, subdivision (e)(4), and is categorized as a dangerous drug pursuant to Business  
17 and Professions Code section 4022.

18 **FIRST CAUSE FOR DISCIPLINE**

19 *(Conviction of Substantially Related Crimes)*

20 18. Respondent has subjected his license to discipline pursuant to sections  
21 4300, 4301(l), 4311(c), and 490 of the Code, in conjunction with California Code of Regulations,  
22 title 16, section 1770, on the grounds of unprofessional conduct, in that, Respondent was  
23 convicted of crimes substantially related to the qualifications, functions or duties of a pharmacist,  
24 as follows:

25 a. On or about March 28, 2003, Respondent was convicted, on a plea of nolo  
26 contendere, of one count of violating Vehicle Code section 23152(a) (driving under the influence  
27 of alcohol or drugs), a misdemeanor, in the Los Angeles Municipal Court, Van Nuys Judicial  
28 District, Case No. 3VN00434, entitled *People v. David Huynh*. The circumstances surrounding

1 the conviction are that on or about January 21, 2003, Respondent was arrested by the West Los  
2 Angeles Police Department after he rear-ended another vehicle. The arresting officers noted that  
3 Respondent's speech was slow and deliberate, he had poor balance, and was unable to perform  
4 field sobriety tests as demonstrated. Respondent's vehicle was searched by the West Los  
5 Angeles Police Department officers, and a clear plastic baggie containing numerous tablets was  
6 discovered. Respondent admitted to one of the arresting officers that the tablets were his, and  
7 that they were Vicodin, Soma and Ambien.

8           b.       On or about June 6, 2003, Respondent was convicted on his plea of guilty  
9 of one count of violating Health and Safety Code section 11350(a) (possession of narcotic  
10 controlled substance, to wit: opiate (hydrocodone)), a felony, in the Los Angeles Municipal  
11 Court, Beverly Hills Judicial District, Case No. SA048734, entitled *People v. David Huynh*.  
12 Entry of judgment was deferred for 24 months. The circumstances surrounding the conviction  
13 are that on or about March 9, 2003, Respondent was arrested by the California Highway Patrol  
14 (CHP) after he rear-ended a vehicle. CHP officers noted that Respondent's gait and balance were  
15 unsteady, his speech was slurred, and he seemed disoriented. Respondent was unable to perform  
16 field sobriety tests as demonstrated. Subsequently, Respondent was searched and 3 pills were  
17 found in his left rear pants pocket. Two of the pills were identified as Soma, and the other pill  
18 was identified as Vicodin. Respondent submitted a urine sample, which tested positive for  
19 opiates.

20           c.       On or about October 24, 2003, Respondent was convicted on his plea of  
21 nolo contendere of one count of violating Vehicle Code section 23152(a) (driving under the  
22 influence of alcohol/drugs), a misdemeanor, in the Los Angeles Municipal Court, Van Nuys  
23 Judicial District, Case No. 3VN01574, entitled *People v. David Huynh*. The circumstances  
24 surrounding the conviction are that on or about April 1, 2003, Respondent was driving a motor  
25 vehicle while under the influence of an alcoholic beverage or a drug.

26           d.       On or about October 24, 2003, Respondent was convicted on his plea of  
27 nolo contendere of one count of violating Vehicle Code section 23152(a) (driving under the  
28 influence of alcohol/drugs), a misdemeanor, in the Los Angeles Municipal Court, Van Nuys

1 Judicial District, Case No. 3VN02155, entitled *People v. David Huynh*. The circumstances  
2 surrounding the conviction are that on or about May 2, 2003, Respondent was arrested by  
3 California Highway Patrol officers following a solo roll-over collision. Approximately 30  
4 prescription pills (8 Vicodin, 2 Norco, 7 Ambien, and 13 Soma) were found loose throughout  
5 Respondent's vehicle by a CHP officer. Respondent admitted to one of the arresting officers that  
6 he had approximately 47 pills (20 Vicodin, 15 Soma, 10 Ambien, and 2 Norco) loose in the  
7 glove box of his vehicle. Respondent was able to provide a prescription for the Vicodin ES pills,  
8 only. Respondent admitted to buying the Norco pills in Mexico.

9 **SECOND CAUSE FOR DISCIPLINE**

10 *(Violation of a Statute Regulating Controlled Substances/Dangerous Drugs)*

11 19. Respondent has subjected his license to discipline pursuant to sections  
12 4300 and 4301(j) of the Code, on the grounds of unprofessional conduct, in that Respondent  
13 violated Health and Safety Code section 11350(a), a statute regulating controlled substances and  
14 dangerous drugs, as described above in paragraph 18(b).

15 **THIRD CAUSE FOR DISCIPLINE**

16 *(Possession of Dangerous Drugs/Controlled Substances Without a Prescription)*

17 20. Respondent is subject to disciplinary action under sections 4300, and  
18 4301(j) of the Code, on the grounds of unprofessional conduct for violating section 4060 of the  
19 Code, in that Respondent possessed dangerous drugs/controlled substances without a prescription  
20 as more fully set forth above in paragraph 18.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 *(Furnish, Administer Controlled Substances to Himself)*

23 21. Respondent has subjected his license to discipline pursuant to sections  
24 4300, 4301(h), and 4301(j) of the Code, in conjunction with Health and Safety Code section  
25 11170, in that Respondent furnished and administered controlled substances to himself, as  
26 described above in paragraph 18.

27 ///

28 ///

1 **FIFTH CAUSE FOR DISCIPLINE**

2 *(Furnish Dangerous Drugs to Himself)*

3 22. Respondent is subject to disciplinary action under sections 4300 and 4059  
4 of the Code, on the grounds of unprofessional conduct, in that Respondent furnished dangerous  
5 drugs to himself, without a prescription, as set forth in paragraph 18.

6 **SIXTH CAUSE FOR DISCIPLINE**

7 *(Use of Drugs in Dangerous/Injurious Manner)*

8 23. Respondent is subject to disciplinary action under sections 4300 and  
9 4301(h) of the Code, on the grounds of unprofessional conduct, in that Respondent administered  
10 to himself dangerous drugs to an extent or in a manner dangerous or injurious to himself, to any  
11 person, or to the public, as more fully set forth above in paragraph 18.

12 **SEVENTH CAUSE FOR DISCIPLINE**

13 *(Actions Warranting Denial of License)*

14 24. Respondent has subjected his license to discipline pursuant to sections  
15 4300 and 4301(p) of the Code, on the grounds of unprofessional conduct, in that he committed  
16 acts which would warrant denial of a license as described above in paragraphs 18 - 23.

17 **EIGHTH CAUSE FOR DISCIPLINE**

18 *(Violation of the Pharmacy Law)*

19 25. Respondent has subjected his license to discipline pursuant to sections  
20 4300 and 4301(o) of the Code, for unprofessional conduct, in that Respondent violated  
21 pharmacy laws when he committed acts as described above in paragraphs 18 - 24.

22 **PRAYER**

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

- 25 1. Revoking or suspending Pharmacist License No. RPH-52876, issued to  
26 David Lee Huynh;
- 27 2. Ordering David Lee Huynh to pay the Board of Pharmacy the reasonable  
28 costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

DATED: 2/22/05

P. F. Harris  
PATRICIA F. HARRIS  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
Complainant