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6 Attorneys for Complainant

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

11 In the Matter of the Statement of Issues Against:

12 KIM TO NGUYEN-HOANG
28587 Rochell Avenue
13 Hayward, CA 94544

14 Respondent.

Case No. 2351

OAH No. N2001020347

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

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20 PARTIES

21 1. Complainant Patricia F. Harris is the Executive Officer of the Board of
22 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
23 by Bill Lockyer, Attorney General of the State of California, by Michael B. Franklin, Deputy
24 Attorney General.

25 2. Respondent Kim To Nguyen-Hoang ("Respondent") is represented in this
26 proceeding by attorney Gregory P. Matzen, whose address is Lewis, D'Amato, Brisbois &
27 Bisgaard, 2500 Venture Oaks Way, Suite 200, Sacramento, CA 95833-3500.

28 3. On or about May 26, 2000, Respondent submitted an application for the

1 California Pharmacist License examination. The application was denied on or about September
2 26, 2000.

3 JURISDICTION

4 4. Statement of Issues No. 2351, was filed before the Board of Pharmacy of
5 the Department of Consumer Affairs, ("Board"), and is currently pending against Respondent.
6 The Statement of Issues, together with all other statutorily required documents, was duly served
7 on Respondent on February 28, 2001, and Respondent timely filed her Notice of Defense
8 contesting the Statement of Issues. A copy of Statement of Issues No. 2351 is attached as
9 Exhibit A and incorporated herein by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read and discussed with her counsel the nature of
12 the charges and allegations in the Statement of Issues and the effects of this Stipulated Settlement
13 and Disciplinary Order.

14 6. Respondent is fully aware of her legal rights in this matter, including the
15 right to a hearing on the charges and allegations in the Statement of Issues, the right to be
16 represented by counsel, at her own expense, the right to confront and cross-examine the
17 witnesses against her, the right to present evidence and to testify on her own behalf, the right to
18 the issuance of subpoenas to compel the attendance of witnesses and the production of
19 documents, the right to reconsideration and court review of an adverse decision, and all other
20 rights accorded by the California Administrative Procedure Act and other applicable laws.

21 7. Respondent voluntarily, knowingly and intelligently waives and gives up
22 each and every right set forth above.

23 8. Respondent understands that the charges and allegations in the Statement
24 of Issues, if proven at a hearing, constitute cause for denying her application for a pharmacist
25 license.

26 9. Respondent admits the truth of each and every charge and allegation in the
27 Statement of Issues No. 2351.

28 10. Respondent agrees that her application for a pharmacist license is subject

1 to denial and she agrees to be bound by the Board's imposition of discipline as set forth in the
2 Order below.

3 CONTINGENCY

4 11. This stipulation shall be subject to the approval of the Board. Respondent
5 understands and agrees that Board of Pharmacy's staff and counsel for Complainant may
6 communicate directly with the Board regarding this stipulation and settlement, without notice to
7 or participation by Respondent or her counsel. If the Board fails to adopt this stipulation as its
8 Order, except for this paragraph the Stipulated Settlement and Disciplinary Order shall be of no
9 force or effect, it shall be inadmissible in any legal action between the parties, and the Board
10 shall not be disqualified from further action by having considered this matter.

11 12. The parties agree that facsimile copies of this Stipulated Settlement and
12 Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as
13 the original Stipulated Settlement and Disciplinary Order and signatures.

14 13. In consideration of the foregoing admissions and stipulations, the parties
15 agree that the Board shall, without further notice or formal proceeding, issue and enter the
16 following Disciplinary Order:

17 DISCIPLINARY ORDER

18 **IT IS HEREBY ORDERED** that Respondent Kim To Nguyen-Hoang's
19 application for a pharmacist license is hereby accepted. Upon successful completion of the all
20 licensing requirements, a license shall be issued to respondent. Said license shall immediately be
21 revoked, the order of revocation stayed and respondent placed on probation for a period of 3
22 years on the following terms and conditions:

23 **1. Obey All Laws**

24 Respondent shall obey all federal and state laws and regulations substantially related or
25 governing the practice of pharmacy.

26 **2. Reporting to the Board**

27 Respondent shall report to the Board or its designee quarterly. The report shall be
28 made either in person or in writing, as directed. If the final probation report is not made

1 as directed, probation shall be extended automatically until such time as the final report is
2 made.

3 **3. Interview with the Board**

4 Upon receipt of reasonable notice, respondent shall appear in person for interviews
5 with the Board or its designee upon request at various intervals at a location to be determined
6 by the Board or its designee. Failure to appear for a scheduled interview without prior
7 notification to Board staff shall be considered a violation of probation.

8 **4. Cooperation with Board Staff**

9 Respondent shall cooperate with the Board's inspection program and in the Board's
10 monitoring and investigation of the respondent's compliance with the terms and conditions of her
11 probation. Failure to cooperate shall be considered a violation of probation.

12 **5. Peer Review**

13 Respondent shall submit to peer review as deemed necessary by the Board.

14 **6. Continuing Education**

15 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
16 pharmacist as directed by the Board.

17 **7. Notice to Employers**

18 Respondent shall notify all present and prospective employers of the decision in case
19 No. 2351 and the terms, conditions and restrictions imposed on respondent by the decision.
20 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days
21 of respondent undertaking new employment, respondent shall cause her employer to report to the
22 Board in writing acknowledging the employer has read the decision in case No. 2351. If
23 respondent works for or is employed by or through a pharmacy employment service,
24 respondent must notify the pharmacist-in-charge and/or owner at every pharmacy at which
25 she is to be employed or used of the fact and terms of the decision in case No. 2351 in advance of
26 the respondent commencing work at the pharmacy.

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

1 the respondent is considered an employee or independent contractor.

2 **8. No Preceptorships, Supervision of Interns, Being Pharmacist-in-Charge**

3 Respondent shall not supervise any intern pharmacist or perform any of the duties of a
4 preceptor, nor shall respondent be the pharmacist-in-charge of any pharmacy licensed by the
5 Board.

6 **9. Reimbursement of Board Costs**

7 Respondent shall pay to the Board its costs of investigation and prosecution in
8 the amount of \$ 1000.00. Respondent shall make said payments as specified by the Board. If
9 respondent fails to pay the costs as specified by the Board and on or before the
10 date(s) determined by the Board, the Board shall, without affording the respondent notice and
11 the opportunity to be heard, revoke probation and carry out the disciplinary order that was
12 stayed.

13 **10. Probation Monitoring Costs**

14 Respondent shall pay the costs associated with probation monitoring as determined by the
15 Board each and every year of probation. Such costs shall be payable to the Board at the end of
16 each year of probation. Failure to pay such costs shall be considered a violation of probation.

17 **11. Status of License**

18 Respondent shall, at all times while on probation, maintain an active current license with
19 the Board, including any period during which suspension or probation is tolled.

20 If respondent's license expires by operation of law or otherwise, upon renewal or
21 reapplication, respondent's license shall be subject to all terms of this probation not previously
22 satisfied.

23 **12. Notification of Employment/Mailing Address Change**

24 Within ten (10) days of a change in employment -- either leaving or
25 commencing employment -- respondent shall so notify the Board in writing, including the
26 address of the new employer; within ten (10) days of a change of mailing address, respondent
27 shall notify the Board in writing. If respondent works for or is employed through a pharmacy
28 employment service, respondent shall, as requested, provide to the Board or its designee with

1 a work schedule, indicating dates and location of employment.

2 **13. Tolling of Probation**

3 If respondent leaves California to reside or practice outside this state, respondent must
4 notify the Board in writing of the dates of departure and return within ten (10) days of departure
5 or return. Periods of residency, except such periods where the respondent is actively practicing
6 pharmacy within California, or practice outside California shall not apply to reduction of the
7 probationary period.

8 Should respondent, regardless of residency, for any reason cease practicing pharmacy in
9 California, respondent must notify the Board in writing within ten (10) days of cessation of the
10 practice of pharmacy or resuming the practice of pharmacy. "Cessation of practice" means any
11 period of time exceeding thirty (30) days in which respondent is not engaged in the practice of
12 pharmacy as defined in section 4052 of the Business and Professions Code.

13 It is a violation of probation for respondent's probation to remain tolled pursuant to
14 the provisions of this condition for a period exceeding a consecutive period of three years.

15 **14. Violation of Probation**

16 If respondent violates probation in any respect, the Board, after giving respondent
17 notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order
18 which was stayed. If a petition to revoke probation or an accusation is filed against respondent
19 during probation, the Board shall have continuing jurisdiction, and the period of probation shall
20 be extended, until the petition to revoke probation is heard and decided.

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

26 **15. Completion of Probation**

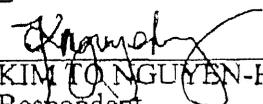
27 Upon successful completion of probation, respondent's license will be fully restored.
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ACCEPTANCE

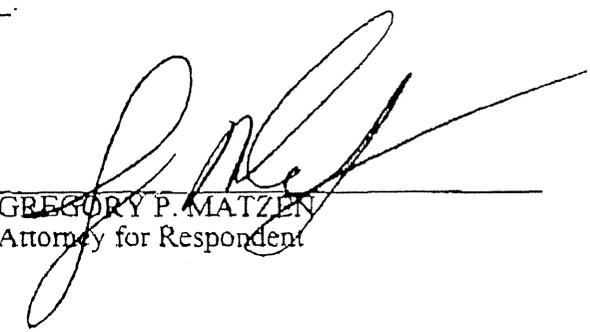
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed the terms and conditions and other matters contained therein with my attorney Gregory P. Matzen, I understand the effect this stipulation will have on my application for a pharmacist license. I enter into this Stipulated Settlement voluntarily, knowingly and intelligently and agree to be bound by the Disciplinary Order and Decision of the Board of Pharmacy. I further agree that a facsimile copy of this Stipulated Settlement and Disciplinary Order, including facsimile copies of signatures, may be used with the same force and effect as the originals.

DATED: 5/10/01


KIM TO NGUYEN-HOANG
Respondent

I have read and fully discussed with Respondent Kim To Nguyen-Hoang the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 5/17/01


GREGORY P. MATZEN
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully

1 submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

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DATED: 5/18/01.

BILL LOCKYER, Attorney General
of the State of California



MICHAEL B. FRANKLIN
Deputy Attorney General

Attorneys for Complainant

DOJ Docket Number: 03583110-SF2001AD0099
Stipulation 11/9/00

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

In the Matter of the Accusation Against:

KIM TO NGUYEN-HOANG
28587 Rochell Avenue
Hayward, CA 94544

Respondent.

Case No. 2351

OAH No. N2001020347

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy of the Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on July 29, 2001.

It is so ORDERED July 19, 2001.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STEVE LITSEY
Board President

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of the State of California
2 JONATHAN A. BORNSTEIN, State Bar No. 196345
Deputy Attorney General
3 California Department of Justice
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4 Oakland, California 94612-1413
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5 Facsimile: (510) 622-2270

6 Attorneys for Complainant

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

12

In the Matter of the Statement of Issues Against:)

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KIM TO NGUYEN-HOANG)
28587 Rochelle Avenue)
Hayward, California 94544)

NO. 2351

STATEMENT OF ISSUES

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Respondent.)

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Complainant Patricia Florian Harris, as cause for denial of licensure, alleges:

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1. Complainant is the Executive Officer of the California Board of Pharmacy ("Board")

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and makes and files this Statement of Issues solely in her official capacity.

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LICENSE INFORMATION

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2. On March 23, 2000, the Board received an application from Kim To Nguyen-Hoang

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("Respondent") for the California Pharmacist License examination. On her application,

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Respondent indicated that she had been convicted of a crime in October, 1999 when she pled

26

guilty to a felony charge of falsifying naturalization tests for immigrants to the Immigration and

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Naturalization Service. A review of the court records showed that on September 13, 1999,

1 Respondent pled guilty to violating 18 U.S.C. §1001 ("False Statements"). This plea arose out of
2 an incident on August 9, 1997. The circumstances of the offense involved Respondent's false
3 certification that she had administered naturalization tests to 11 applicants in Oakley, California.
4 In fact, no such tests were administered on that day.

5 STATUTES AND REGULATIONS

6 3. Code Section 4300(c) provides that the Board may refuse a license to any applicant
7 guilty of unprofessional conduct. The Board may, in its sole discretion, issue a probationary
8 license to any applicant for a license who is guilty of unprofessional conduct and who has met all
9 other requirements for licensure.

10 4. Code section 4301 provides that unprofessional conduct shall include, but is not
11 limited to, any of the following:

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

15 (l) The conviction of a crime substantially related to the qualifications,
16 functions, and duties of a licensee under this chapter; and

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

18 5. Code section 480(a)(1) provides that a board may deny a license on the grounds that
19 the applicant has been convicted of a crime substantially related to the qualifications, functions,
20 or duties of the business or profession for which application is made. A conviction within the
21 meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo
22 contendere.

23 6. Code section 480(a)(2) provides that a board may deny a license on the grounds that
24 the applicant has done any act involving dishonesty, fraud or deceit with the intent to
25 substantially benefit himself or another, or substantially injure another.

26 7. Code section 480(a)(3) provides that a board may deny a license on the grounds that
27 the applicant has done any act which if done by a licentiate of a business or profession in

1 question, would be grounds for suspension or revocation of a license.

2 CAUSE FOR DENIAL

3 8. Respondent has subjected her application to denial for the violation of Code sections
4 480 (a)(1), (a)(2) and (a)(3), taken together with Code sections 4300(c), in that on September 13,
5 1999, Respondent pled guilty to violating 18 U.S.C. §1001 ("False Statements"). This plea
6 arose out of an incident on August 9, 1997. The circumstances of the offense involved
7 Respondent's false certification that she had administered naturalization tests to 11 applicants in
8 Oakley, California. In fact, no such tests were administered on that day.

9 PRAYER

10 WHEREFORE, Complainant requests that the Board hold a hearing on these
11 matters, and that following the hearing, the Board issue a decision:

- 12 1. Denying the application for a Pharmacist License submitted by Kim To
13 Nguyen-Hoang.

14
15 DATED: 2/16/01

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18 P. J. Harris
19 Patricia Harris
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant
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