BILL LOCKYER, Attorney General
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Attorneys for Complainant

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

In the Matter of the Accusation Against: MEKONG PHARMACY, QUYNH HUU NGUYEN, PHARMACIST-IN-CHARGE 861 East Anaheim Street Long Beach, CA 90813 Original Pharmacy Permit No. PHY 41664, QUYNH HUU NGUYEN 861 E. Anaheim Street Long Beach, CA 90813 Pharmacist License No. RPH 36158, and HUY HUU NGUYEN 861 E. Anaheim Street Long Beach, CA 90813 Pharmacist License No. RPH 46345 Respondent.	Case No. 2795 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about July 28, 2005, Complainant Patricia F. Harris, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 2795 against Quynh Huu Nguyen, doing business as Mekong Pharmacy, Quynh Huu Nguyen, Pharmacist-in-Charge and Huy Huu Nguyen, Pharmacist, (Respondents)

before the Board of Pharmacy.

2. On or about May 22, 1996, the Board of Pharmacy (Board) issued Original Pharmacy Permit No. PHY 41664 to Huu Quynh Nguyen, doing business as Mekong Pharmacy (Respondent Pharmacy). The Original Pharmacy Permit was in full force and effect at all times relevant to the charges until June 16, 2003 when a change of ownership occurred and the license was cancelled. Huu Quynh Nguyen, RPH 36158, was the Pharmacist-in-Charge from May 22, 1996 through June 16, 2003. The license expired on May 1, 2004 and has not been renewed.

3. On or about January 7, 1981, the Board of Pharmacy issued Original Pharmacist License No. RPH 36158 to Quynh Huu Nguyen (Respondent Nguyen). The Original Pharmacist License expired on May 31, 2005 and has not been renewed.

4. On or about August 11, 1993, the Board of Pharmacy issued Original Pharmacist License No. RPH 46345 to Huy Huu Nguyen (Respondent Huy). The Original Pharmacist License was in expired on January 31, 2005 and has not been renewed.

5. On or about August 17, 2005, Janice E. Williams, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2795, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to each Respondent's address of record with the Board, which was and is 861 East Anaheim Street, Long Beach, CA 90813. A copy of the Accusation, the related documents, and Declaration of Service are attached as exhibit A, and are incorporated herein by reference.

6. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

7. On or about August 19, 2005, the signed return receipt card receipts for the aforementioned documents were returned by the U.S. Postal Service stamped "August 19, 2005". A copy of the signed return receipt cards are attached hereto as exhibit B, and are incorporated herein by reference.

8. Government Code section 11506 states, in pertinent part:

"(c) The respondent shall be entitled to a hearing on the merits if the respondent

files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

9. Respondents failed to file a Notice of Defense within 15 days after service upon them of the Accusation, and therefore waived their right to a hearing on the merits of Accusation No. 2795.

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

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

11. Pursuant to its authority under Government Code section 11520, the Board finds Respondents are in default. The Board will take action without further hearing and, based on Respondents' express admissions by way of default and the evidence before it, contained in exhibits A and B finds that the allegations in Accusation No. 2795 are true.

12. The total costs for investigation and enforcement are $23,766.50 as of October 17, 2005.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, the licenses issued to Respondents' Mekong Pharmacy, Original Pharmacy Permit No. PHY 41664, Quynh Huu Nguyen, Original Pharmacist License No. RPH 36158, and Huy Huu Nguyen, Original Pharmacist License No. RPH 46345 are all subject to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Pharmacy is authorized to revoke Original Pharmacy Permit No. PHY 41664 issued to Respondent Mekong Pharmacy, Original Pharmacist License No. RPH 36158 issued to Quynh Huu Nguyen, and Original Pharmacist License No. RPH 46345 issued to

Huy Huu Nguyen, based upon the following violations alleged in the Accusation:

a. Conviction of a Crime--Respondent Huy is subject to disciplinary action under Business and Professions Code sections 4300 and 4301, subdivision (j) and (l).

b. Failure to Maintain Current Inventory--Respondents Pharmacy and Nguyen are subject to disciplinary action under Business and Professions Code sections 4300 and 4301, subdivisions (j) and (o) on the grounds of unprofessional conduct for violating section 4081, subdivision (a), in conjunction with California Code of Regulations, title 16, section 1718.

c. Failure to Provide Records, Subversion of Investigations–Respondents Pharmacy, Nguyen and Huy are subject to disciplinary action under sections Business and Professions Code sections 4300 and 4301, subdivisions (o) and (q) on the grounds of unprofessional conduct for violating Business and Professions Code section 4332.

d. Filled Erroneous and Fraudulent Prescriptions--Respondents Mekong, Nguyen and Huy are subject to disciplinary action under Business and Professions Code sections 4300 and 4301, subsections (o) in conjunction with California Code of Regulations, Title 16, Section 1761.

e. Responsible for Compliance--Respondents Pharmacy, Nguyen and Huy are subject to disciplinary action under sections Business and Professions Code sections 4300 and 4301, subdivision (o), on the grounds of unprofessional conduct for failing to comply with California Code of Regulations, title 16, section 1714(b) and (d) in that they failed to maintain the facilities so that drugs were safely and properly prepared, maintained and distributed, and provide effective control against theft or diversion.

f. Pharmacist-In-Charge Violation--Respondents Pharmacy and Nguyen are further subject to disciplinary action under Business and Professions Code sections 4300 and 4301, subdivision (j), on the grounds of unprofessional conduct for violating Business and Professions Code section 4113 (c) in that Respondent Nguyen failed to notify the Board at any time that he had ceased to be the pharmacist-in-charge of Respondent Pharmacy.

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ORDER

IT IS SO ORDERED that Original Pharmacy Permit No. PHY 41664, heretofore issued to Respondent Mekong Pharmacy, Quynh Huu Nguyen, Pharmacist-in-Charge, is REVOKED.

IT IS HEREBY FURTHER ORDERED that Original Pharmacist License No. RPH 36158 heretofore issued to Respondent Quynh Huu Nguyen is REVOKED.

IT IS HEREBY FURTHER ORDERED that Original Pharmacist License No. RPH 46345 issued to Respondent Huy Huu Nguyen is REVOKED.

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

This Decision shall become effective on January 4, 2006.

It is so ORDERED December 5, 2005

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

DOJ docket number:LA2004601626

By

STANLEY W. GOLDENBERG
Board President

Attachments:

Exhibit A: Accusation No.2795, Related Documents, and Declaration of Service

Exhibit A

Accusation No. 2795,
Related Documents and Declaration of Service

BILL LOCKYER, Attorney General
of the State of California
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Attorneys for Complainant

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

In the Matter of the Accusation Against: HUU QUYNH NGUYEN, doing business as MEKONG PHARMACY 861 East Anaheim Street Long Beach, CA 90813 Original Pharmacy Permit No. PHY 41664, and QUYNH HUU NGUYEN 861 E. Anaheim Street Long Beach, CA 90813 Original Pharmacist License No. RPH 36158, and HUY HUU NGUYEN 861 E. Anaheim Street Long Beach, CA 90813 Pharmacist License No. RPH 46345, Respondents.	Case No. 2795 **ACCUSATION**

Complainant alleges:

PARTIES

1. Patricia F. Harris (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer

Affairs.

2. On or about May 22, 1996, the Board of Pharmacy issued Original Pharmacy Permit No. PHY 41664 to Huu Quynh Nguyen, doing business as Mekong Pharmacy (Respondent Pharmacy). The Original Pharmacy Permit was in full force and effect at all times relevant to the charges until June 16, 2003 when a change of ownership occurred.

Huu Quynh Nguyen, RPH 36158, was the Pharmacist-in-Charge from May 22, 1996 through June 16, 2003.

3. On or about January 7, 1981, the Board of Pharmacy issued Original Pharmacist License No. RPH 36158 to Quynh Huu Nguyen (Respondent Nguyen). The Original Pharmacist License was in full force and effect at all times relevant to the charges brought herein but expired on May 31, 2005.

4. On or about August 11, 1993, the Board of Pharmacy issued Pharmacist License No. RPH 46345 to Huy Huu Nguyen (Respondent Huy). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein but expired on January 31, 2005.

JURISDICTION

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

6. Section 4300 of the Code permits the Board to take disciplinary action to suspend or revoke a license issued by the Board.

7. Section 4301 of the Code states:

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

. . . .

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

. . . .

"(l) The conviction of a crime substantially related to the qualification, functions, and duties of a licensee. . .

. . . .

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

. . . .

"(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board."

8. Section 4081 of the Code states:

"(a) All records of manufacture and of sale, acquisition, or disposition of dangerous drugs or dangerous devices shall be at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

"(b) The owner, officer, and partner of any pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or exemptee, for maintaining the records and inventory described in this section."

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9. Section 4113 of the Code states:

"(a) Every pharmacy shall designate a pharmacist-in-charge and within 30 days thereof, shall notify the board in writing of the identity and license number of that pharmacist and the date he or she was designated.

"(b) The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

"(c) Every pharmacy shall notify the board within 30 days of the date when a pharmacist ceases to be a pharmacist-in-charge."

10. Section 4332 of the Code states:

"Any person who fails, neglects, or refuses to maintain the records required by Section 4081 or who, when called upon by an authorized officer or a member of the board, fails, neglects, or refuses to produce or provide the records within a reasonable time, or who willfully produces or furnishes records that are false, is guilty of a misdemeanor."

11. California Code of Regulations, title 16, section 1714, states:

. . . .

"(b) Each pharmacy licensed by the board shall maintain its facilities, space, fixtures, and equipment so that drugs are safely and properly prepared, maintained, secured and distributed. The pharmacy shall be of sufficient size and unobstructed area to accommodate the safe practice of pharmacy.

. . . .

"(d) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of dangerous drugs and devices, and records for such drugs and devices. Possession of a key to the pharmacy where dangerous drugs and controlled substances are stored shall be restricted to a pharmacist."

12. California Code of Regulations, title 16, section 1718, states:

"'Current Inventory' as used in Sections 4081 and 4332 of the Business and Professions Code shall be considered to include complete accountability for all dangerous drugs

handled by every licensee enumerated in Sections 4081 and 4332.

"The controlled substances inventories required by Title 21, CFR, Section 1304 shall be available for inspection upon request for at least 3 years after the date of the inventory."

13. California Code of Regulations, title 16, section 1761, states:

"(a) No pharmacist shall compound or dispense any prescription which contains any significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any such prescription, the pharmacist shall contact the prescriber to obtain the information needed to validate the prescription.

"(b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense a controlled substance prescription where the pharmacist knows or has objective reason to know that said prescription was not issued for a legitimate medical purpose."

14. Business and Professions Code section 118, subdivision (b) states:

"The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

15. Section 125.3, subdivision (a), states, in pertinent part:

"Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

16. <u>CONTROLLED SUBSTANCES</u>

A. "Phernergan with Codeine", a brand name for Promethazine with Codeine, is a Schedule V controlled substance as designated by Health and Safety Code section

11058(c)(1) and is categorized as a dangerous drug pursuant to section 4022 of the Code.

B. "Tylenol with Codeine #3", a brand name for Acetaminophen with Codeine, 30 mg. for #3, with 500 mg. Acetaminophen, and is a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(2) and is categorized as a dangerous drug pursuant to section 4022 of the Code.

C. "Vicodin ES", a combination drug containing hydrocodone bitartrate and acetaminophen, and is a Schedule III controlled substance as defined in Health and Safety Code section 11056(e)(7) and is categorized as a dangerous drugs according to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(Failure to Maintain Current Inventory)

17. Respondents Pharmacy and Nguyen are subject to disciplinary action under sections 4300 and 4301, subdivisions (j) and (o) of the Code on the grounds of unprofessional conduct for violating section 4081, subdivision (a), in conjunction with California Code of Regulations, title 16, section 1718. The circumstances are as follows:

a. On or about May 6, 2003, inspectors for the Board conducted an inspection of Respondent Pharmacy. On or about May 22, 2003, the inspectors conducted a follow up inspection and performed an audit of acquisitions and dispositions of prescriptions, invoices and returns on controlled substances Vicodin, Vicodin ES, Tylenol #3 and #4 and Phenergan with Codeine. The audit, limited to the period from January 1, 2003 to May 23, 2003, revealed the following:

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Drug	Amount Purchased (1/1/02-5/23/03)	Dispensed by Prescription	Dispensed on Daily Log	On Hand of 5/23/2003	Unaccounted
Vicodin ES	441,400 tablets	15,830 tablets	33,582 tablets	1,000 tablets	390,988 tablets
Tylenol #3	831,400 tablets	49,146 tablets	60,888 tablets	8,072 tablets	713,294 tablets
Prometh with Codeine	10,114,560 ml.	278,460 ml.	352,040 ml.	23,540 ml (+120,960 seized by Federal DEA)	9,339,560 ml.

b. The prescriptions filled by Respondent Pharmacy and the daily logs for the period January 1, 2002 to May 22, 200 did not match. The inspector found that the Respondent Pharmacy daily log showed 3,004 daily entries and the inspector found 2,189 prescriptions. Additionally, 1,147 entries in the daily log did not have a prescription and 506 prescriptions were not on the daily log.

SECOND CAUSE FOR DISCIPLINE

(Failure to Provide Records, Subversion of Investigations)

18. Respondents Pharmacy, Nguyen and Huy are subject to disciplinary action under sections 4300 and 4301, subdivisions (o) and (q) of the Code on the grounds of unprofessional conduct for violating section 4332 of the Code, in that they failed to provide Pharmacy records upon request and attempted to subvert an investigation of the Board . The circumstances are as follows:

a. During the Board audit of May, 2003, Respondent failed to produce complete records of acquisition or disposition when requested by the inspector as set forth in paragraph 17.

b. On or about May 6, 2003, Respondent Huy told the inspector for the Board that they only purchased drugs from two wholesalers. In truth and fact, Respondents used at least fifteen (15) different wholesalers.

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THIRD CAUSE FOR DISCIPLINE

(Filled Erroneous and Fraudulent Prescriptions)

19. Respondents Mekong, Nguyen and Huy are subject to disciplinary action under sections 4300 and 4301, subsections (o) of the Code in conjunction with California Code of Regulations, Title 16, Section 1761, in that they filled fraudulent prescriptions, as more fully set forth below:

From on or about January 7, 2002 to on or about June 22, 2002, they filled approximately 260 prescriptions for Vicodin ES, Tylenol #3, and Promethazine with Codeine, using deceased pharmacists' licenses, or whose licenses had been surrendered or revoked.

FOURTH CAUSE FOR DISCIPLINE

(Responsible for Compliance)

20. Respondents Pharmacy, Nguyen and Huy are subject to disciplinary action under sections 4300 and 4301, subdivision (o), on the grounds of unprofessional conduct for failing to comply with California Code of Regulations, title 16, section 1714(b) and (d) in that they failed to maintain the facilities so that drugs were safely and properly prepared, maintained and distributed, and provide effective control against theft or diversion, as more fully set forth in paragraph 17, 18 and 19.

FIFTH CAUSE FOR DISCIPLINE

(Conviction of a Crime)

21. Respondent Huy is further subject to disciplinary action under sections 4300 and 4301, subdivision (j) and (l) of the Code as follows:

(a) On or about June 9, 2004, in U.S. District Court, Southern District of Alabama, Respondent Huy, in Case No. CR. No. 03-00191 (U.S. v Andrew Huy Huu Nguyen) following his plea of guilty, was convicted of a violation of Title 21, United States Code, Section 841 (a) (i) (Possess with intent to distribute codeine) and a violation of Title 21, United States Code, Section 841(a)(l) and Title 18, United States Code, Sections 1952 (a) (3) and 2 (Interstate Transportation in aid of racketeering);

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(b) Said convictions are violations of the Statutes of the United States regulatory controlled substances and are substantially related to the qualifications, functions, and duties of a pharmacist.

SIXTH CAUSE FOR DISCIPLINARY

(Pharmacist-In-Charge Violation)

22. Respondents Pharmacy and Nguyen are further subject to disciplinary action under Section 4300 and 4301, subdivision (j), on the grounds of unprofessional conduct for violating section 4113 (c) of the Code in that Respondent Nguyen failed to notify the Board at any time that he had ceased to be the pharmacist-in-charge of Respondent Pharmacy.

OTHER MATTERS

23. Business and Professions Code section 4307(a) provides, in pertinent part, that any person whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, or partner and while acting as the manager, administrator, owner, member, officer, director, associate, or partner had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a license.

PRAYER

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

1. Revoking or suspending Original Pharmacy Permit No. PHY 41664, issued to Huu Quynh Nguyen, doing business as Mekong Pharmacy.

2. Revoking or suspending Original Pharmacist License No. RPH 36158, issued to Quynh Huu Nguyen.

3. Revoking or suspending Pharmacist License No. RPH 46345, issued to Huy Huu Nguyen.

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4. Ordering Mekong Pharmacy, Quynh Huu Nguyen and Huy Huu Nguyen to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 7/28/05

P. F. Harris

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

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CML (10/20/2004)

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Attorneys for Complainant

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

In the Matter of the Accusation Against: MEKONG PHARMACY, QUYNH HUU NGUYEN, PHARMACIST-IN-CHARGE, QUYNH HUU NGUYEN, and HUY HUU NGUYEN Respondents.	Case No. 2795 **STATEMENT TO RESPONDENT** [Gov. Code §§ 11504, 11505(b)]

TO RESPONDENT:

Enclosed is a copy of the Accusation that has been filed with the Board of Pharmacy of the Department of Consumer Affairs (Board), and which is hereby served on you.

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to the Board, represented by Deputy Attorney General Gregory J. Salute, within fifteen (15) days after a copy of the Accusation was personally served on you or mailed to you, you will be deemed to have waived your right to a hearing in this matter and the Board may proceed upon the Accusation without a hearing and may take action thereon as provided by law.

The request for hearing may be made by delivering or mailing one of the enclosed forms entitled "Notice of Defense," or by delivering or mailing a Notice of Defense as provided in section 11506 of the Government Code, to

Gregory J. Salute
Deputy Attorney General
Ronald Reagan Building
300 South Spring Street, Suite 1702
Los Angeles, CA 90013.

You may, but need not, be represented by counsel at any or all stages of these proceedings.

The enclosed Notice of Defense, if signed and filed with the Board, shall be deemed a specific denial of all parts of the Accusation, but you will not be permitted to raise any objection to the form of the Accusation unless you file a further Notice of Defense as provided in section 11506 of the Government Code within fifteen (15) days after service of the Accusation on you.

If you file any Notice of Defense within the time permitted, a hearing will be held on the charges made in the Accusation.

The hearing may be postponed for good cause. If you have good cause, you are obliged to notify the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, California 90013, within ten (10) working days after you discover the good cause. Failure to notify the Office of Administrative Hearings within ten (10) days will deprive you of a postponement.

Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are enclosed.

If you desire the names and addresses of witnesses or an opportunity to inspect and copy the items mentioned in section 11507.6 of the Government Code in the possession, custody or control of the Board you may send a Request for Discovery to the above designated Deputy Attorney General.

NOTICE REGARDING STIPULATED SETTLEMENTS

It may be possible to avoid the time, expense and uncertainties involved in an administrative hearing by disposing of this matter through a stipulated settlement. A stipulated settlement is a binding written agreement between you and the government regarding the matters charged and the discipline to be imposed. Such a stipulation would have to be approved by the

Board of Pharmacy but, once approved, it would be incorporated into a final order.

Any stipulation must be consistent with the Board's established disciplinary guidelines; however, all matters in mitigation or aggravation will be considered. A copy of the Board's Disciplinary Guidelines will be provided to you on your written request to the state agency bringing this action.

If you are interested in pursuing this alternative to a formal administrative hearing, or if you have any questions, you or your attorney should contact Deputy Attorney General Gregory J. Salute at the earliest opportunity.

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

In the Matter of the Accusation Against: MEKONG PHARMACY, ET. AL. Respondents.	Case No. 2795 **NOTICE OF DEFENSE** [Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

DATED: _____

Respondent's Name _____

Respondent's Signature _____

Respondent's Mailing Address _____

City, State and Zip Code _____

Respondent's Telephone Number _____

Check appropriate box:

☐ I do not consent to electronic reporting.

The hearing in this case will be electronically reported/recorded, unless you check the above-left box to indicate that you do not consent to electronic recording, in which case the hearing will be reported by a stenographic reporter. If you do not check this box, you may withdraw your consent to electronic recording at any point up to fifteen (15) calendar days prior to the date set for hearing, by a written statement served on the Office of Administrative Hearings and on counsel for Complainant. If the box is not checked, and no written withdrawal of consent is served on the Office of Administrative Hearing and on counsel for Complainant by fifteen (15) calendar days prior to the hearing, you waive any right to stenographic reporting.

☐ I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name _____

Counsel's Mailing Address _____

City, State and Zip Code _____

Counsel's Telephone Number _____

☐ I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

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

In the Matter of the Accusation Against: MEKONG PHARMACY, ET. AL. Respondents.	Case No. 2795 **NOTICE OF DEFENSE** [Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

DATED: _____

Respondent's Name _____

Respondent's Signature _____

Respondent's Mailing Address _____

City, State and Zip Code _____

Respondent's Telephone Number _____

Check appropriate box:

☐ I do not consent to electronic reporting.

The hearing in this case will be electronically reported/recorded, unless you check the above-left box to indicate that you do not consent to electronic recording, in which case the hearing will be reported by a stenographic reporter. If you do not check this box, you may withdraw your consent to electronic recording at any point up to fifteen (15) calendar days prior to the date set for hearing, by a written statement served on the Office of Administrative Hearings and on counsel for Complainant. If the box is not checked, and no written withdrawal of consent is served on the Office of Administrative Hearing and on counsel for Complainant by fifteen (15) calendar days prior to the hearing, you waive any right to stenographic reporting.

☐ I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name _____

Counsel's Mailing Address _____

City, State and Zip Code _____

Counsel's Telephone Number _____

☐ I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

BILL LOCKYER, Attorney General
of the State of California
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Attorneys for Complainant

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

In the Matter of the Accusation Against: MEKONG PHARMACY, QUYNH HUU NGUYEN, PHARMACIST-IN-CHARGE, QUYNH HUU NGUYEN, and HUY HUU NGUYEN Respondents.	Case No. 2795 **REQUEST FOR DISCOVERY** [Gov. Code § 11507.6]

TO RESPONDENTS:

Under section 11507.6 of the Government Code of the State of California, parties to an administrative hearing, including the Complainant, are entitled to certain information concerning the opposing party's case. A copy of the provisions of section 11507.6 of the Government Code concerning such rights is included among the papers served.

PURSUANT TO SECTION 11507.6 OF THE GOVERNMENT CODE, YOU ARE HEREBY REQUESTED TO:

1. Provide the names and addresses of witnesses to the extent known to the Respondent, including, but not limited to, those intended to be called to testify at the hearing, and

2. Provide an opportunity for the Complainant to inspect and make a copy of any of the following in the possession or custody or under control of the Respondent:

a. A statement of a person, other than the Respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the Respondent as to this person is the basis for the administrative proceeding;

b. A statement pertaining to the subject matter of the proceeding made by any party to another party or persons;

c. Statements of witnesses then proposed to be called by the Respondent and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

d. All writings, including but not limited to reports of mental, physical and blood examinations and things which the Respondent now proposes to offer in evidence;

e. Any other writing or thing which is relevant and which would be admissible in evidence, including but not limited to, any patient or hospital records pertaining to the persons named in the pleading;

f. Investigative reports made by or on behalf of the Respondent pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this Request for Discovery, "statements" include written statements by the person, signed, or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for Discovery should be deemed to authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as attorney's

work product.

Your response to this Request for Discovery should be directed to the undersigned attorney for the Complainant at the address on the first page of this Request for Discovery **within 30 days after service** of the Accusation.

Failure without substantial justification to comply with this Request for Discovery may subject the Respondent to sanctions pursuant to sections 11507.7 and 11455.10 to 11455.30 of the Government Code.

DATED: 8/17/05

BILL LOCKYER, Attorney General
of the State of California

GREGORY J. SALUTE
Deputy Attorney General

Attorneys for Complainant

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COPY OF GOVERNMENT CODE SECTIONS 11507.5, 11507.6 AND 11507.7
PROVIDED PURSUANT TO GOVERNMENT CODE SECTIONS 11504 AND 11505

SECTION 11507.5: Exclusivity of discovery provisions

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

SECTION 11507.6: Request for discovery

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

SECTION 11507.7: Petition to compel discovery; Order; Sanctions

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

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DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL
(Separate Mailings)

Case Name: **In the Matter of the Accusation Against:**
Mekong Pharmacy, Quynh Huu Nguyen and Huy Huu Nguyen

Case No.: **2795**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On August 17, 2005, I served the attached:

Accusation, Statement to Respondent, Notice of Defense two (2) copies
Request for Discovery, Discovery Statutes

by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the:

Accusation, Statement to Respondent, Notice of Defense two (2) copies
Request for Discovery, Discovery Statutes

was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at Los Angeles addressed as follows

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 17, 2005, at Los Angeles, California.

Janice E. Williams
Declarant

Janice Williams
Signature

LA2004601626.wpd

SERVICE LIST

Case Name: **In the Matter of the Accusation Against:**
Mekong Pharmacy, Quynh Huu Nguyen and Huy Huu Nguyen

Board of Pharmacy Case No.: **2795**

Mekong Pharmacy
861 East Anaheim Street
Long Beach, CA 90813

Certified Mail Number
7001 0360 0003 2795 5919

Huu Quynh Nguyen
861 East Anaheim St.
Long Beach, CA 90813

Certified Mail Number
7001 0360 0003 2705 5933

Huy Huu Nguyen
Pharmacist
Mekong Pharmacy
861 East Anaheim Street
Long Beach, CA 90813

Certified Mail Number
7001 0360 0003 2705 5926

File

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

7001 0360 0003 2705 5919

OFFICIAL USE

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

Postmark Here

Sent To: MeKong Pharmacy
Street, Apt. No.; or PO Box No.: 861 East Anaheim Street
City, State, ZIP+4: Long Beach, CA 90813

PS Form 3800, January 2001 — See Reverse for Instructions

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

7001 0360 0003 2705 5933

OFFICIAL USE

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

Postmark Here

Sent To: Huu Quynh Nguyen
Street, Apt. No.; or PO Box No.: 861 East Anaheim St.
City, State, ZIP+4: Long Beach, CA 90813

PS Form 3800, January 2001 — See Reverse for Instructions

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

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OFFICIAL USE

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

Postmark Here

Sent To: Hay Huu Nguyen
Pharmacist MeKong Pharmacy
Street, Apt. No.; or PO Box No.: 861 East Anaheim Street
City, State, ZIP+4: Long Beach, CA 90813

PS Form 3800, January 2001 — See Reverse for Instructions