

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

In the Matter of the Accusation Against:

Case No. 3706

SYSAVATH JIMMY BOUNTHAPANYA
2315 Barlow Avenue
San Jose, CA 95122

Pharmacy Technician License NO. TCH 68660

Respondent.

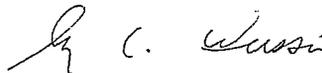
DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on February 17, 2011.

It is so ORDERED January 18, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
Deputy Attorney General
4 State Bar No. 226937
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 355-5437
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

10 In the Matter of the Accusation Against:
11 **SYSAVATH JIMMY BOUNTHAPANYA**
12 2315 Barlow Avenue
San Jose, CA 95122
13 **Pharmacy Technician License No. TCH**
14 **68660**
15 Respondent.

Case No. 3706

OAH No. 2010090207

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
18 proceeding 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 Edmund
22 G. Brown Jr., Attorney General of the State of California; by Justin R. Surber, Deputy Attorney
23 General.

24 2. Sysavath Jimmy Bounthapanya (Respondent) is representing himself in this
25 proceeding and has chosen not to exercise his right to be represented by counsel.

26 3. On or about April 18, 2006, the Board of Pharmacy issued Pharmacy Technician
27 License No. TCH 68660 to Sysavath Jimmy Bounthapanya (Respondent). The Pharmacy
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1 Technician License was in full force and effect at all times relevant to the charges brought in
2 Accusation No. 3706 and will expire on January 31, 2012, unless renewed.

3 JURISDICTION

4 4. Accusation No. 3706 was filed before the Board of Pharmacy (Board), Department of
5 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
6 statutorily required documents were properly served on Respondent on August 9, 2010.
7 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
8 No. 3706 is attached as Exhibit A and incorporated by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and allegations in
11 Accusation No. 3706. Respondent also has carefully read, and understands the effects of this
12 Stipulated Surrender of License and Order.

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

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

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in Accusation
24 No. 3706, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician
25 License No. TCH 68660 for the Board's formal acceptance.

26 9. Respondent understands that by signing this stipulation he enables the Board to issue
27 an order accepting the surrender of his Pharmacy Technician License without further process.

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CONTINGENCY

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2 10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
3 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
4 communicate directly with the Board regarding this stipulation and surrender, without notice to or
5 participation by Respondent. By signing the stipulation, Respondent understands and agrees that
6 he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board
7 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,
8 the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this
9 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
10 be disqualified from further action by having considered this matter.

11 11. The parties understand and agree that facsimile copies of this Stipulated Surrender of
12 License and Order, including facsimile signatures thereto, shall have the same force and effect as
13 the originals.

14 12. This Stipulated Surrender of License and Order is intended by the parties to be an
15 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
16 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
17 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
18 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
19 executed by an authorized representative of each of the parties.

20 13. In consideration of the foregoing admissions and stipulations, the parties agree that
21 the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

22
23 IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 68660, issued to
24 Respondent Sysavath Jimmy Bounthapanya, is surrendered and accepted by the Board of
25 Pharmacy.

26 14. The surrender of Respondent's Pharmacy Technician License and the acceptance of
27 the surrendered license by the Board shall constitute the imposition of discipline against
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1 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
2 Respondent's license history with the Board.

3 15. Respondent shall lose all rights and privileges as a pharmacy technician in California
4 as of the effective date of the Board's Decision and Order.

5 16. Respondent shall cause to be delivered to the Board his wall license certificate and, if
6 one was issued, his pocket license on or before the effective date of the Decision and Order.

7 17. If he ever applies for licensure or petitions for reinstatement in the State of California,
8 the Board shall treat it as a new application for licensure. Respondent must comply with all the
9 laws, regulations and procedures for licensure in effect at the time the application or petition is
10 filed, and all of the charges and allegations contained in Accusation No. 3706 shall be deemed to
11 be true, correct and admitted by Respondent when the Board determines whether to grant or deny
12 the application or petition.

13 18. If Respondent should ever apply or reapply for a new license or certification, or
14 petition for reinstatement of a license, by any other health care licensing agency in the State of
15 California, all of the charges and allegations contained in Accusation, No. 3706 shall be deemed
16 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
17 other proceeding seeking to deny or restrict licensure.

18 19. The costs of investigation and enforcement in this matter are \$2,777.5. These costs
19 are waived unless and until Respondent applies for a new or reinstated license, certification, or
20 registration from this Board, in which case Respondent shall pay these costs in full at the time of
21 application.

22
23 ACCEPTANCE

24 I have carefully read the Stipulated Surrender of License and Order. I understand the
25 stipulation and the effect it will have on my Pharmacy Technician License. I enter into this
26 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to
27 be bound by the Decision and Order of the Board of Pharmacy.
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DATED:

10/18/10


SYSAVATH JIMMY BOUNTHAPANYA
Respondent

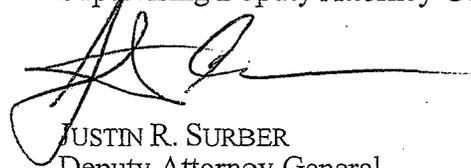
ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: October ²⁶ 2010

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General



JUSTIN R. SURBER
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3706

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
Deputy Attorney General
4 State Bar No. 226937
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 355-5437
6 Facsimile: (415) 703-5480
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10 In the Matter of the Accusation Against:

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12 2315 Barlow Avenue
San Jose, CA 95122
13 **Pharmacy Technician License No. TCH**
68660

A C C U S A T I O N

14
15 Respondent.

16
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18 Complainant alleges:

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20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 23 2. On or about April 18, 2006, the Board of Pharmacy issued Pharmacy Technician
24 License Number TCH 68660 to Sysavath Jimmy Bounthapanya (Respondent). The Pharmacy
25 Technician License was in full force and effect at all times relevant to the charges brought herein
26 and will expire on January 31, 2012, unless renewed.

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JURISDICTION

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

4. Section 4300 of the Code states:

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

5. 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:

...

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

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

...

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

1 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
2 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
3 of this provision. The board may take action when the time for appeal has elapsed, or the
4 judgment of conviction has been affirmed on appeal or when an order granting probation is made
5 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
6 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
7 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
8 indictment.

9”

10 6. Section 125.3 of the Code states, in pertinent part, that the Board may request the
11 administrative law judge to direct a licentiate found to have committed a violation or violations of
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13 enforcement of the case.

14 7. Section 4022 of the Code states

15 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
16 humans or animals, and includes the following:

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

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

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

24 8. Section 4060 of the Code states:

25 "No person shall possess any controlled substance, except that furnished to a person upon
26 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
27 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
28 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a

1 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
2 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
3 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
4 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
5 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
6 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
7 labeled with the name and address of the supplier or producer.

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

11 9. Section 490(a) of the Code states:

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

16 10. Health and Safety Code section 11377(a) states:

17 ~~"Except as authorized by law and as otherwise provided in subdivision (b) or Section~~
18 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
19 Business and Professions Code, every person who possesses any controlled substance which is
20 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in
21 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),
22 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)
23 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section
24 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to
25 practice in this state, shall be punished by imprisonment in a county jail for a period of not more
26 than one year or in the state prison."

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1 DRUGS INVOLVED

2 11. Methamphetamine is a Schedule II controlled substance pursuant to Health and
3 Safety Code section 11055(d)(2) and a dangerous drug pursuant to section 4022 if the Code.

4 FIRST CAUSE FOR DISCIPLINE

5 (Violation of Drug Laws)

6 12. Respondent is subject to disciplinary action under section 4301(j) of the code in that
7 Respondent violated Health and Safety sections 11377 and 11364 and Business and Professions
8 Code section 4060; all three are California statutes regulating controlled substances and
9 dangerous drugs. On or about March 26, 2009, Fremont police found Respondent in possession
10 of methamphetamine and a methamphetamine pipe.

11 SECOND CAUSE FOR DISCIPLINE

12 (Dangerous Use of Drugs)

13 13. Respondent is subject to disciplinary action under section 4301(h) of the Code in that
14 Respondent used methamphetamine in March 2009. Respondent was arrested on March 26,
15 2009 for possession of methamphetamine and a methamphetamine pipe.

16 THIRD CAUSE FOR DISCIPLINE

17 (Conviction)

18 14. Respondent is subject to disciplinary action under sections 4301(l) and 490 of the
19 Code in that Respondent was convicted of a crime that is substantially related to the duties,
20 functions, or qualifications of a pharmacy technician. On or about April 7, 2010, in Alameda
21 County Superior Court Case No. 233207A, Respondent was convicted of possession of controlled
22 substance (Methamphetamine) in violation of Health and Safety Code section 11377. The
23 circumstances leading to Respondent conviction are described in paragraphs 12-13, above.

24 PRAYER

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

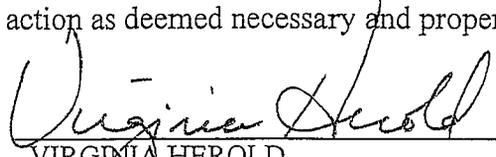
27 1. Revoking or suspending Pharmacy Technician License Number TCH 68660, issued
28 to Sysavath Jimmy Bounthapanya;

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2. Ordering Sysavath Jimmy Bounthapanya to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 8/4/10



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

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