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

In the Matter of the Petition	to R	Revoke	Probation
Against:			

Case No. 4541

OAH No. 2013100485

MIKE DUC CHAU

301 S. Fremont Ave. #A Alhambra, CA 91801

Pharmacy Technician Registration No. TCH 89969

Respondent.

#### **DECISION AND ORDER**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on September 4, 2014.

It is so ORDERED on August 5, 2014.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

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By

STAN C. WEISSER Board President

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

In the Matter of the Petition to Revoke Probation Against:

MIKE DUC CHAU

Pharmacy Technician Registration No. TCH 89969,

Respondent.

Case No. 4541

OAH No. 2013100485

#### PROPOSED DECISION

Administrative Law Judge Angela Villegas, State of California, Office of Administrative Hearings, heard this matter on June 23, 2014, in Los Angeles, California.

Gillian E. Friedman, Deputy Attorney General, represented Complainant.

Respondent was present and represented himself.

Evidence was received, and the matter was submitted for decision, on June 23, 2014.

#### **FACTUAL FINDINGS**

- 1. Complainant Virginia Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed the Petition to Revoke Probation (Petition) in her official capacity. Respondent filed a notice of defense requesting a hearing.
- 2. Respondent is registered with the Board as a pharmacy technician under number TCH 89969. The registration was issued on April 23, 2012, and expired on December 31, 2013. The Board has continuing jurisdiction pursuant to Business and Professions Code section 118, subdivision (b). Respondent's registration was issued under the terms of a stipulated settlement and Decision and Order (collectively, Settlement)<sup>1</sup> effective April 23, 2012. In the Settlement, Respondent admitted the truth of the facts

<sup>&</sup>lt;sup>1</sup> The Settlement resolved underlying Board case number 3889 (Office of Administrative Hearings no. L-2011050984), which involved a statement of issues.

alleged in the underlying statement of issues, which included Respondent's use of methamphetamine on April 5, 2008,<sup>2</sup> and a misdemeanor conviction under Penal Code section 415, subdivision 1 (public challenge to fight).<sup>3</sup> Respondent and his then-attorney both signed the Settlement, and at the administrative hearing in the present manner, Respondent acknowledged that his attorney had explained the Settlement to him.<sup>4</sup>

- 3. As provided by the Settlement, Respondent's registration was issued with probationary terms, including stayed revocation and an immediate suspension pending Respondent's certification, within one year, "as defined by Business and Professions Code section 4202(a)(4)[.]" (Exhibit 4.) The certification defined by Business and Professions Code section 4202, subdivision (a)(4), is conferred by the Pharmacy Technician Certification Board; it is a national certification obtained by passing an examination. (Testimony of Katherine Sill.) The suspension of Respondent's registration has never been lifted, because the condition required for lifting it has not been fulfilled. Respondent did not take the Pharmacy Technician Certification Board examination within one year, and he still has not done so.
- 4. Additional conditions of Respondent's probationary registration under the Settlement included the following:
- (a) As Condition 2,<sup>5</sup> a requirement that Respondent "report to the board quarterly, on a schedule as directed by the board or its designee. . . . either in person or in writing, as directed." (Exhibit 4.)
- (b) As Condition 3, a requirement that Respondent participate in Board interviews, "at such intervals and locations as are determined by the board it its designee[,]" and provide advance notice to the Board if unable to appear. (*Id.*)
- (c) As Condition 14, a requirement that Respondent enroll and participate in a random drug screening program. (*Id.*)
- (d) As Condition 18, a requirement that, within 60 days of the effective date of the Settlement (i.e., by June 22, 2012), Respondent "submit to the board or its

<sup>&</sup>lt;sup>2</sup> Respondent was charged in connection with the incident (Superior Court of California, County of Los Angeles, case number 8AH02345) and pled guilty, but his plea was set aside under the court's deferred entry of judgment program.

<sup>&</sup>lt;sup>3</sup> Superior Court of California, County of Los Angeles, case number 7GL02622.

<sup>&</sup>lt;sup>4</sup> Respondent spontaneously offered this information about his attorney-client communication.

<sup>&</sup>lt;sup>5</sup> In one place, the Petition erroneously refers to this as condition 4. (Petition at p. 3, line 4.)

designee, for prior approval, a community service program in which respondent shall provide free health-care related services on a regular basis to a community or charitable facility or agency for at least 25 hours per year for the first two (2) years of probation." (*Id.*)

- 5. In the case of a probation violation, the Board was authorized to revoke the probation after notice and an opportunity for Respondent to be heard. (*Id.*; Condition 11.)
- 6. The Board sent Respondent letters on April 5, April 10, May 1, May 24, and August 6, 2012, reminding him of his obligations to meet with the Board (and specifying meeting times and locations), enroll in the drug testing program, and pass the Pharmacy Technician Certification Board examination.
- 7. Respondent failed to fulfill his obligations under probation Conditions 2, 3, 14, and 18. He did not appear for his initial meeting with the Board, and did not appear for a second meeting scheduled as a courtesy after Respondent's non-appearance at the first meeting. He did not provide the Board with advance notice that he would not attend the meetings. Indeed, he did not contact the Board at all. He never provided any reports to the Board, and did not enroll or participate in the Board's drug testing program. He did not furnish a community service plan. And, as noted above (cf. Factual Finding 3), he did not take the Pharmacy Technician Certification Board examination.
- 8. Respondent did not comply with the terms of probation because he was disappointed when his former attorney explained his obligations under the Settlement, which Respondent found daunting. Respondent was not able to afford the cost of complying with some probation terms, such as drug testing. Because Respondent felt defeated at that point, he did not open the Board's correspondence until "a couple months" (Respondent's testimony) after receiving it. By that time, deadlines had passed, and Respondent felt that he had "had [his] chance and bl[own] it." (*Id.*) Respondent did not contact the Board to see if the situation could be salvaged.
- 9. In the meantime, Respondent underwent training to become a surgical technologist. He is not currently employed in that capacity, though he is seeking such employment. He works part time at a Ralphs grocery store. If he were able to begin his pharmacy technician probation anew, he feels that, this time, he could and would fulfill its terms. He would immediately arrange to take the Pharmacy Technician Certification Board examination, and he feels better able to afford the financial obligations of probation because his family has offered to help.

#### LEGAL CONCLUSIONS

1. Complainant established cause to revoke Respondent's probation and impose the stayed discipline of revocation against Respondent's pharmacy technician registration, based on Respondent total failure to fulfill the conditions of his probation. (Factual Findings 3-8.) Respondent's failure to comply with the terms of probation is substantially related to

the qualifications, functions, and duties of a registered pharmacy technician because it reflects on his ability and willingness to comply with legally binding directives, and thus "evidences present or potential unfitness... to perform the functions authorized by his... registration in a manner consistent with the public health, safety, or welfare." (Cal. Code Regs., tit. 16 (Regulation), § 1770.)

Respondent's showing was insufficient to avoid the revocation of his probation and registration. His wholesale failure even to attempt to fulfill the terms of his probation—a failure that continued until the day of the administrative hearing (Regulation §§ 1769, subd. (c)(3) and 1760; Disciplinary Guidelines (Rev. 10/2007) (Guidelines) at p. 3, (13))—as well as the underlying grounds for denying his registration (two instances of criminal behavior, one involving drugs), constitute serious misconduct (Regulation § 1769, subds. (c)(1), (c)(2), (c)(4); Guidelines at p. 3 (1), (3), (4), (6), (10), (11), (14), and (15)), and are grounds for revocation (Guidelines at pp. 5-18 and 44). (Factual Findings 2-8.) Respondent had no explanation for his inaction other than his "disappointment" at the onerousness of the Settlement and its concomitant financial obligations, which prompted him to avoid facing the issue until, as Respondent put it, he had "blown" his chance. (Factual Finding 8.) (Regulation § 1769, subd. (c)(4) and (c)(5); Guidelines at p. 3, (9) and (10).) Ignoring an unpleasant situation is neither a mature nor an effective response. Respondent had options other than ignoring his probation obligations, but either did not consider them or chose not to exercise them. For example, he could have attended the meetings and at least asked if payment terms could be arranged for the matters he found unaffordable. Even after realizing the deadlines had passed, Respondent could have contacted the Board to see if he could do something to salvage the situation, but once again, he did not. Respondent's actions reflect no eagerness on his part to prove his willingness to do what was necessary to maintain his registration. On the contrary, they read as a rejection of the entire undertaking. Thus, even though Respondent has made some efforts at rehabilitation in the meantime (Factual Finding 9), such as education, and even though he feels his attitude toward probation has improved, in the end he could provide no assurance that his attitude toward his pharmacy technician or his probation obligations has fundamentally changed.

#### **ORDER**

1. The probation of pharmacy technician registration number TCH 89969, issued to Respondent Mike Duc Chau, is revoked.

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2. Pharmacy technician registration number TCH 89969, issued to Respondent Mike Duc Chau, is also revoked. Respondent shall relinquish his pharmacy technician license to the Board within 10 days of the effective date of this Decision. Respondent may not reapply or petition the Board for reinstatement of his or her revoked technician license for three years from the effective date of this decision.

Dated: July 1, 2014

Angela Villegas

Administrative Law Judge

Office of Administrative Hearings

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1 2 3 4 5 6 7 8 9	BOARD OF C DEPARTMENT OF C	RE THE PHARMACY ONSUMER AFFAIRS CALIFORNIA	
10		A AMARA SANA TANA	
11			
12	In the Matter of the Petition to Revoke Probation Against,	Case No. 4541	
13	MIKE DUC CHAU	DETERMINATION OF DEVIOUS DESCRIPTION	
14	301 S. Fremont Ave., #A Alhambra, CA 91801	PETITION TO REVOKE PROBATION	
15	Pharmacy Technician Registration No. TCH 89969		
16	Respondent.		
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19	Complainant alleges:		
20	PAR	TIES	
21	Virginia Herold (Complainant) brings this Petition to Revoke Probation solely in her		
22	official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer		
23	Affairs.		
24	2. On or about April 23, 2012, the Board of Pharmacy issued Pharmacy Technician		
25	Registration Number TCH 89969 to Mike Duc Chau (Respondent). The Pharmacy Technician		
26	Registration was in effect at all times relevant to the charges brought herein and will expire on		
27	December 31, 2013, unless renewed.		
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		1	
		PETITION TO REVOKE PROBATION	

3. In a disciplinary action entitled "In the Matter of Statement of Issues Against In the Matter of the Statement of Issues Against Mike Duc Chau," Case No. 3889, the Board of Pharmacy, issued a decision, effective April 23, 2012, whereby Respondent was to be issued a probationary license upon satisfaction of meeting all statutory and regulatory requirements. Following the satisfaction of this condition, Respondent was issued Pharmacy Technician License No. TCH 89969, and the license was immediately revoked. However, the revocation was stayed and Respondent's Pharmacy Technician Registration was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

#### **JURISDICTION**

- 4. This Petition to Revoke Probation 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 (Code) unless otherwise indicated.
- 5. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].
- 6. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.
- 7. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(e) of the Code provides that any non-pharmacist license issued by the Board may be canceled if not renewed within 60 days after expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

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#### FIRST CAUSE TO REVOKE PROBATION

(Failure to Report to Board)

- 8. At all times after the effective date of Respondent's probation, Condition 2 stated:
- 4. Report to the Board

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

- 9. Respondent's probation is subject to revocation because he failed to comply with
- Probation Condition 2, Failure to Report Quarterly to Board, referenced above. The facts and circumstances regarding this violation are that to date, no quarterly reports have been received by the Board.

#### SECOND CAUSE TO REVOKE PROBATION

(Failure to Appear for Interviews with the Board)

- 10. At all times after the effective date of Respondent's probation, Condition 3 stated:
- 3. Interview with the Board

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

11. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 3, referenced above. The facts and circumstances regarding this violation are that Respondent failed to appear before the Board as scheduled on two separate occassions as required by Term 3 of the terms and conditions of probation. Respondent did not contact the Board regarding his failure to appear at each of the conferences.

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#### THIRD CAUSE TO REVOKE PROBATION

(Failure to Participate in Random Drug Screening)

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

#### 14. Random Drug Screening

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Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee. At all times respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of or any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or controlled substances, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the board.

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. 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.

13. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 14, referenced above. The facts and circumstances regarding this violation are that Respondent failed to enroll in and participate in the Board's random drug screening program.

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#### FOURTH CAUSE TO REVOKE PROBATION

(Failure to Establish a Community Service Program)

At all times after the effective date of Respondent's probation, Condition 18 stated:

#### 18. Community Services Program

Within sixty (60) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, a community service program in which respondent shall provide free health-care related services on a regular basis to a community or charitable facility or agency for at least 25 hours per year for the first two (2) years of probation. Within thirty (30) days of board approval thereof, respondent shall submit documentation to the board demonstrating commencement of the community service program. A record of this notification must be provided to the board upon request. Respondent shall report on progress with the community service program in the quarterly reports. Failure to timely submit, commence, or comply with the program shall be considered a violation of probation.

Respondent's probation is subject to revocation because he failed to comply with Probation Condition 18, referenced above. Specifically, Respondent failed to submit a community service program for Board approval.

#### 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:

- Revoking the probation that was granted by the Board of Pharmacy in Case No. 3889 1. and imposing the disciplinary order that was stayed thereby revoking Pharmacy Technician Registration No. TCH 89969 issued to Mike Duc Chau;
- Revoking or suspending Pharmacy Technician Registration No. TCH 89969, issued 2. to Mike Duc Chau; and

3.	Taking such other and	further action a	deemed	necessary	and pr	oper
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7/18/13 YTRGINIA HEROLD

Executive Officer Board of Pharmacy Department of Consumer Affairs State of California

Complainant

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### Exhibit A

Decision and Order

Board of Pharmacy Case No. 3889

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

In the Matter of the Statement of Issues Against:

Case No. 3889

MIKE DUC CHAU
AKA MIKE VU CHAU
AKA VU DUC CHAU
301 S. Fremont Ave., #A
Alhambra, CA 91801
Pharmacy Technician Application

OAH NO.; L-2011050984 STIPULATED SETTLEMENT AND DISCIPLINARY ORDER

Respondent.

#### **DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary 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 April 23, 2012.

It is so ORDERED on March 23, 2012.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

By

STANLEY C. WEISSER Board President

	·				
1	Kamala D. Harris				
2	Attorney General of California MARC D. GREENBAUM				
3	Supervising Deputy Attorney General	·			
٥	GILLIAN E. FRIEDMAN Deputy Attorney General				
. 4	State Bar No. 169207				
5	300 So. Spring Street, Suite 1702 Los Angeles, CA 90013				
. 6	Telephone: (213) 897-2564 Facsimile: (213) 897-2804	·			
7	Attorneys for Complainant				
		RE THE			
8	8 BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS				
9		CALIFORNIA			
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$-{11}$	In the Matter of the Statement of Issues Against:	Case No. 3889			
	MIKE DUC CHAU	OAH No. L-2011050984			
12	AKA MIKE VU CHAU	STIPULATED SETTLEMENT AND DISCIPLINARY ORDER			
13	AKA VU DUC CHAU 301 S. Fremont Ave., #A				
14	Alhambra, CA 91801				
15	Pharmacy Technician Application				
16	Respondent.				
	<u></u>				
17					
18	IT IS HEREBY STIPULATED AND AGI	REED by and between the parties to the above-			
19	entitled proceedings that the following matters a	re true:			
20	PAR	TIES			
21	1 Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.				
22	She brought this action solely in her official capacity and is represented in this matter by Kamala				
23	D. Harris, Attorney General of the State of Califo	ornia, by Gillian E. Friedman, Deputy Attorney			
24	General.				
25	2. Respondent Mike Duc Chau aka Mik	ke Vu Chau aka Vu Duc Chau (Respondent) is			
26	represented in this proceeding by attorney James	Victor Kosnett, Esq., whose address is: James			
27	Victor Kosnett, Esq., Law Offices of Kosnett &	Durchfort 11355 West Olympic Blvd., Suite 300,			
28	Los Angeles, CA 90064.	•			
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STIPULATED SETTLEMENT (3889)

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3. On or about February 10, 2009, Respondent filed an application dated January 30, 2009, with the Board of Pharmacy to obtain a Pharmacy Technician Registration.

#### JURISDICTION

Statement of Issues No. 3889 was filed before the Board of Pharmacy (Board), 4. Department of Consumer Affairs, and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on May 10, 2011. A copy of Statement of Issues No. 3889 is attached as exhibit A and incorporated herein by reference.

#### ADVISEMENT AND WAIVERS

- Respondent has carefully read, fully discussed with counsel, and understands the 5. charges and allegations in Statement of Issues No. 3889. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.
- Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- Respondent voluntarily, knowingly, and intelligently waives and gives up each and 7. every right set forth above.

#### CULPABILITY

- 8. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. 3889.
- Respondent agrees that his Application for Registration as a Pharmacy Technician is subject to denial and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

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#### RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

#### CONTINGENCY

- 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.
- 12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.
- 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

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

#### DISCIPLINARY ORDER

IT IS HEREBY ORDERED that upon satisfaction of all statutory and regulatory requirements for issuance of Registration as a Pharmacy Technician, such Registration shall be issued to respondent Mike Duc Chau aka Mike Vu Chau aka Vu Duc Chau (Respondent) and immediately revoked; the order of revocation is stayed and respondent is placed on probation for four (4) years years upon the following terms and conditions:

#### Certification Prior to Resuming Work

Respondent shall be automatically suspended from working as a pharmacy technician until he is certified as defined by Business and Professions Code section 4202(a)(4) and provides satisfactory proof of certification to the board. Respondent shall not resume working as a pharmacy technician until notified by the board. Failure to achieve certification within one (1) year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the board.

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

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the board 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.

#### 1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

- an arrest or issuance of a criminal complaint for violation of any provision of the

  Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendre in any state or federal criminal proceeding to any criminal complaint, information or indictment
- □ a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's Registration as a Pharmacy Technician or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

#### 2. Report to the Board

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

#### 3. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff,

or failure to appear at two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

#### 4. Cooperate with Board Staff

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

#### 5. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 3889 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 3889 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 3889 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he has read the decision in case number 3889 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is considered an employee, independent contractor or volunteer.

#### 6. Probation Monitoring Costs

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

#### 7. Status of License

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

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

#### 8. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his pharmacy technician license to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This

surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish his pharmacy technician license to the board within ten (10) days of notification by the board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

## 9. Notification of a Change in Name, Residence Address, Mailing Address or Employment

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

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

#### 10. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 20 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 20 hours per calendar month in California, respondent must notify the board in writing within ten (10) days of cessation of work and must further notify the board in writing within ten (10) days of the resumption of the work. Any

-.  failure to provide such notification(s) shall be considered a violation of probation.

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

"Cessation of work" means calendar month during which respondent is not working for at least 20 hours as a pharmacy technician as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least 20 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

#### 11. Violation of Probation

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

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

#### 12. Completion of Probation

Upon written notice by the board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

#### No Ownership of Licensed Premises

Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm,

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or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation. 13. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell

At any time during the period of probation, if respondent has a positive drug screen for any substance not legally authorized, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

#### Random Drug Screening

Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee. At all times respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment

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shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the board in writing.

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

Respondent shall not direct, control or perform any aspect of the practice of pharmacy.

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.

#### 15. Work Site Monitor

Within ten (10) days of the effective date of this decision, respondent shall identify a work site monitor, for prior approval by the board, who shall be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the board quarterly. Should the designated work site monitor determine at any time during the probationary period that respondent has not maintained sobriety, he shall notify the board immediately, either orally or in writing as directed. Should respondent change employment, a new work site monitor must be designated, for prior approval by the board, within ten (10) days of commencing new employment. Failure to identify an acceptable initial or replacement work site monitor, or to ensure quarterly reports are submitted to the board, shall be considered a violation of probation.

#### 16. Notification of Departure

Prior to leaving the probationary geographic area designated by the board or its designee for a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation of probation.

#### 17. Abstain from Drugs and Alcohol Use

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

#### 18. Community Services Program

Within sixty (60) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, a community service program in which respondent shall provide free health-care related services on a regular basis to a community or charitable facility or agency for at least 25 hours per year for the first two (2) years of probation. Within thirty (30) days of board approval thereof, respondent shall submit documentation to the board demonstrating commencement of the community service program. A record of this notification must be provided to the board upon request. Respondent shall report on progress with the community service program in the quarterly reports. Failure to timely submit, commence, or comply with the program shall be considered a violation of probation.

#### ACCEPTANCE I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully 2 discussed it with my attorney, Victor Kosnett, Esq. I understand the stipulation and the effect it 3 will have on my Pharmacy Technician Application. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy. 8 9 Respondent 10 11 I have read and fully discussed with Respondent Mike Duc Chau aka Mike Vu Chau aka 12 Vu Duc Chau the terms and conditions and other matters contained in the above Stipulated 13 Settlement and Disciplinary Order. I approve its form and content. 14 15 Law Offices of Kosnett & Durchfort 16 Attorney for Respondent 17 ENDORSEMENT 18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully 19 submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs. 20 21 Respectfully submitted, 22 KAMALA D. HARRIS Attorney General of California 23 Marc Ď. Greenbaum Supervising Deputy Attorney General 24 25 26 Deputy Attorney General Attorneys for Complainant 27 28 LA2010601454/51004870.doc

Exhibit A

Statement of Issues No. 3889

1	KAMALA D. HARRIS Attorney General of California			
. 2	GLORIA A, BARRIOS			
3	Supervising Deputy Attorney General MICHEL W. VALENTINE			
4	Deputy Attorney General State Bar No. 153078	,		
, i	300 So. Spring Street, Suite 1702	ŀ		
5	Los Angeles, CA 90013 Telephone: (213) 897-1034	l		
6	Facsimile: (213) 897-2804 Attorneys for Complainant	İ		
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8.	BEFORE THE	İ		
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10	STATE OF CALIFORNIA	ĺ		
	Y d N d d G G G G G G G G G G G G G G G G			
11	In the Matter of the Statement of Issues Against:  Case No. 3889			
12	MIKE DUC CHAU	ĺ.		
13	aka MIKE VU CHAU  aka VU DUC CHAU  STATEMENT OF ISSUES	İ		
14	301 S. Fremont Ave., #A			
15	Alhambra, CA 91801			
16	Pharmacy Technician Application			
17	Respondent.			
18				
19	Complainant alleges:			
20	. PARTIES			
21	Virginia Herold (Complainant) brings this Statement of Issues solely in her official			
22	capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs			
23	(Board),			
24	2. On or about February 10, 2009, the Board received an application for registration as a	l		
25	Pharmacy Technician from Mike Duc Chau aka Mike Vu Chau aka Vu Duc Chau (Respondent).			
26	On or about January 30, 2009, Respondent certified under penalty of perjury to the truthfulness of	1		
27	all statements, answers, and representations in the application. The Board denied the application			
28	on July 2, 2010.			
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#### **JURISDICTION**

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

#### STATUTORY PROVISIONS

- 4. Section 480 states, in pertinent part:
- "(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:
- "(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contenders. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.
- "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another. . . ."
  - 5. Section 492 states:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

"This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division."

6. Section 4300, subdivision (c), states, in pertinent part:

"The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. . . ."

- 7. Section 4301 states, in pertinent part, that "unprofessional conduct" is defined to include, but not be limited to, any of the following:
- "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

"(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, of any other state, or of the United States regulating controlled substances and dangerous drugs.

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

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#### REGULATORY PROVISIONS

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

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

#### CONTROLLED SUBSTANCES/DANGEROUS DRUGS

9. Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to section 4022.

#### FIRST CAUSE FOR DENIAL OF APPLICATION

(Conviction of a Crime)

- 10. Respondent's application is subject to denial under sections 480, subdivision (a)(1), 4300, subdivision (c), and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct, in that Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a registered pharmacy technician. The circumstances are as follows:
- a: On or about August 15, 1997, after pleading noto contendere, Respondent was convicted of one misdemeanor count of violating Penal Code section 415(1) [challenge to fight in public] in the criminal proceeding entitled *The People of the State of California v. Vu Duc Chau* (Super. Ct. Los Angeles County, 1997, No. 7GL02622). The Court placed Respondent on two (2) years of summary probation, and ordered Respondent to pay a fine of \$810.00, or in lieu of fine complete 125 hours of community service. In addition, the Court issued a restraining order, ordering Respondent to stay away from Glendale Galleria. On or about October 22, 2003, the Court ordered the matter dismissed pursuant to Penal Code section 1203.4.

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The circumstances underlying the conviction are that on or about May 21, 1997,
 Respondent was arrested and charged with challenge to fight in a public place.

#### SECOND CAUSE FOR DENIAL OF APPLICATION

#### (Use/Under the Influence of Controlled Substance)

11. Respondent's application is subject to denial under sections 4300, subdivision (c), and 4301, subdivision (h), on the grounds of unprofessional conduct, in that on or about April 5, 2008, Respondent admitted to being under the influence of methamphetamine, a controlled substance and dangerous drug, without a valid prescription, and was arrested. Subsequently, on or about June 6, 2008, after pleading guilty, Respondent was convicted of one misdemeanor count of violating Health and Safety Code section 11550(a) [use/under influence of controlled substance] and place on deferred entry of judgment for 18 months in the criminal proceeding entitled *The People of the State of California v. Mike Vu Chau* (Super. Ct. Los Angeles County, 2008, No. 8AH02345). In addition, the Court ordered Respondent to complete an approved controlled substance treatment program within 30 days.

## THIRD CAUSE FOR DENIAL OF APPLICATION (Violate Drug Laws)

12. Respondent's application is subject to denial under sections 4300, subdivision (c), and 4301, subdivision (j), in that Respondent committed acts of unprofessional conduct violating Health and Safety Code section 11550. Complaint refers to and by this reference incorporates the allegations set forth above in paragraph 11, inclusive, as though set forth fully.

#### FOURTH CAUSE FOR DENIAL OF APPLICATION

(Acts Involving Moral Turpitude, Dishonesty, Corruption, or Deceit)

13. Respondent's application is subject to denial under sections 480, subdivision (a)(2) and 4300 subdivision (c) and section 4301 subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts involving moral turpitude, dishonesty, corruption, or deceit. Complaint refers to and by this reference incorporates the allegations set forth above in paragraphs 10 - 12, inclusive, as though set forth fully.

#### 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. Denying Mike Duc Chau's Pharmacy Technician Application; and
- Taking such other and further action as deemed necessary and proper. 2.

VIRGINIA HEROLD Executive Officer

Board of Pharmacy Department of Consumer Affairs

State of California Complainant

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