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

In the Matter of the Accusation Against:

Case No. 4587

DAVID LEE HUYNH 6251 Lena Woodland Hills, CA 91367 OAH No. 2015020538

Pharmacist License No. RPH 52876

Respondent.

#### **DECISION AND ORDER**

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

This Decision shall become effective on November 9, 2015.

It is so ORDERED on October 9, 2015.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

By

Amy Gutierrez, Pharm.D. Board President

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8	BEFORE THE				
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS				
10	STATE OF	CALIFORNIA			
14	In the Matter of the Accusation Against:	Case No. 4587			
12	DAVID LEE HUYNH	OAH No. 2015020538			
13	6251 Lena Woodland Hills, CA 91367	STIPULATED SETTLEMENT AND			
14	Pharmacist License No. RPH 52876	DISCIPLINARY ORDER			
15	Respondent.				
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17.	IT IS HEREBY STIPULATED AND AGRE	ED by and between the parties to the above-			
18	entitled proceedings that the following matters a	re true:			
19	PAI	RTIES			
20	1. Virginia Herold ("Complainant") is	the Executive Officer of the Board of Pharmacy.			
21	She brought this action solely in her official cap	acity and is represented in this matter by Kamala			
22	D. Harris, Attorney General of the State of Calif	fornia, by Desiree Tulleners, Deputy Attorney			
23	General.				
24	2. Respondent David Lee Huynh ("Res	spondent") is represented in this proceeding by			
25	attorney Max B. Gorby, whose address is:				
26	Max B. Gorby				
27	Law Offices of Max B. Gorby 710 Wilshire Boulevard, Suite 420				
28	Santa Monica, CA 90401				

3. On or about September 5, 2001, the Board of Pharmacy issued Pharmacist License No. RPH 52876 to Respondent. The Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 4587, and will expire on October 31, 2016, unless renewed.

#### **JURISDICTION**

- 4. Accusation No. 4587 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 24, 2014.

  Respondent timely filed his Notice of Defense contesting the Accusation.
- 5. A copy of Accusation No. 4587 is attached as Exhibit A, and incorporated herein by reference,

#### ADVISEMENT AND WAIVERS

- 6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 4587. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.
- 7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; 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.
- 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

#### CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 4587.

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27 28 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below. CONTINGENCY

Respondent agrees that his Pharmacist License is subject to discipline and he agrees

- 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 Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.
- 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.
- 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 Pharmacist License No. RPH 52876 issued to Respondent is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

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#### 1. Suspension

#### (a) Mental Health Evaluation

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

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

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

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

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

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

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

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

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

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

#### (b) Pharmacists Recovery Program (PRP)

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

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

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

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

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

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 result in the automatic suspension of practice by respondent and shall be considered a violation of probation.

Respondent may not resume the practice of pharmacy until notified by the Board in writing.

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

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

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

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

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

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

#### 2. Tolling of Suspension

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

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

#### 3. 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 pharmacist license 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 such occurrence shall be considered a violation of probation.

#### 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.

#### 5. 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 for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

#### 6. 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.

#### 7. Continuing Education

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

8. Notice to Employers

During the period of probation, Respondent shall notify all present and prospective employers of the Decision in Case Number 4587 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 4587, and 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.

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 entity licensed by the Board of the terms and conditions of the Decision in Case Number 4587 in advance of the Respondent commencing work at each licensed entity. 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 4587 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 acknowledgments 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, relief or pharmacy management service as a pharmacist or any

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

#### 9. Mental Health Examination

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

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

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

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

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

#### 10. Psychotherapy

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

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

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

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

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

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

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

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

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

#### 11. Medical Evaluation

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

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

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

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

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

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

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

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

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

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

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

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

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writing, stating the basis therefor, that Respondent can safely and independently resume the practice of a pharmacist, and the Board or its designee approves said recommendation.

Respondent shall not resume practice until notified by the Board that practice may be resumed.

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

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

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

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

### 12. 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 shall be considered a violation of probation and shall result in the automatic suspension of practice of pharmacy by Respondent. Respondent may not resume the practice of pharmacy until notified by the Board in writing.

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

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

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

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

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

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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.

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

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

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

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

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

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

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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. Supervised Practice

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

Continuous – At least 75% of a work week

Substantial - At least 50% of a work week

Partial - At least 25% of a work week

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

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

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

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

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

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

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

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

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

#### 16. No Supervision of Ancillary Personnel

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

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

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

board within ninety (90) days following the effective date of this Decision and shall

business, firm, partnership, or corporation currently or hereinafter licensed by the Board.

Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the

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

## 17. No Ownership of Licensed Premises

violation of probation.

III

III

## 18. Criminal Probation/Parole Reports

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

## 19. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as Designated Representative-in-Charge, or Serving as a Consultant

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

#### 20. Reimbursement of Board Costs

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

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

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

#### 21. 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.

#### 22. Status of License

Respondent shall, at all times while on probation, maintain an active, current 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 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.

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III

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

Following the effective date of this Decision, should Respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender his 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 pocket and wall 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 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, including any outstanding costs.

## 24. 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, 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.

#### 25. Tolling of Probation

Except during periods of suspension, Respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 40 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.

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 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 practicing as a pharmacist for a minimum of 40 hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of the cessation of practice, and must further notify the Board in writing within ten (10) days of the resumption of practice. 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 practice" means any calendar month during which respondent is not practicing as a pharmacist for at least 40 hours, as defined by Business and Professions Code section 4000 et seq. "Resumption of practice" means any calendar month during which respondent is practicing as a pharmacist for at least 40 hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

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

#### 26. Violation of Probation

If 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

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#### **ENDORSEMENT**

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

Dated: May 27, 2015

Respectfully submitted,

Kamala D. Harris Attorney General of California Triomas L. Rinaldi

Supervising Deputy Attorney General

DESIREE TULLENERS
Deputy Attorney General
Attorneys for Complainant

1	KAMALA D. HARRIS					
2	Attorney General of California GREGORY J. SALUTE					
3	Supervising Deputy Attorney General DESIREE TULLENERS					
4	Deputy Attorney General State Bar No. 157464					
5	300 So. Spring Street, Suite 1702 Los Angeles, CA, 90013					
6	Telephone: (213) 897-2578 Facsimile: (213) 897-2804					
7	Attorneys for Complainant					
8	DEMODE TIE					
9	BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMED A DEPARTMENT					
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA					
11	In the Matter of the Accusation Against: Case No. 4587					
12						
13	6251 Lena					
14	Woodland Hills, California 91367					
15	Original Pharmacist License No. RPH 52876					
	Respondent.					
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17	Complainant alleges:					
18	PARTIES					
19	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity					
20	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).					
21	2. On or about September 5, 2001, the Board issued Original Pharmacist License No.					
22	RPH 52876 to David Lee Huynh (Respondent). The Pharmacist License was in full force and					
23	effect at all times relevant to the charges brought herein, and will expire on October 31, 2014,					
24	unless renewed.					
25	JURISDICTION					
26	3. This Accusation is brought before the Board under the authority of the following					
27	laws. All section references are to the Business and Professions Code unless otherwise indicated					
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#### STATUTORY PROVISIONS

- 4. Section 490 states, in pertinent part:
- "(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
- (b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.
- (c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of noio contendere. 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. . . ."
- 5. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or revoked."
  - 6. Section 4300.1 states:

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

7. Section 4301 states, in pertinent part:

"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:

(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 license or otherwise, and whether the act is a felony or misdemeanor or not.

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

#### REGULATORY PROVISION

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."

#### COST RECOVERY

9. Section 125.3 provides that 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.

#### FIRST CAUSE FOR DISCIPLINE

#### (Conviction of a Substantially Related Crimes)

- 10. Respondent is subject to disciplinary action under sections 490, 4300 and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, in that, Respondent was convicted of a substantially related crime, as follows:
- a. On January 31, 2013, in the matter of *The People of the State of California v. David Huynh*, (Super. Ct. Los Angeles County, 2012, No. 2JB10116), Respondent was convicted on his plea of *nolo contendere* to one misdemeanor count of violation of Vehicle Code section 2800.1(a) [evading a police officer]. The court sentenced Respondent to 3 years summary probation,

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

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

#### SECOND CAUSE FOR DISCIPLINE

(Act Involving Moral Turpitude, Dishonesty, or Deceit)

11. Respondent is subject to disciplinary action under section 4301, subdivision (f) on the grounds of unprofessional conduct, in that, Respondent committed an act or acts involving moral turpitude, dishonesty, or deceit, in that, Respondent willfully evaded numerous law enforcement officials in their attempts to stop and apprehend him with their lights and sirens activated during a 40 mile vehicle pursuit which endangered the lives of other motorists and passersby.

Complainant refers to, and by reference incorporates, the allegations set forth in paragraph 10, subparagraphs (a) and (b), as though fully set forth herein.

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#### THIRD CAUSE FOR DISCIPLINE

(Actions Warranting Denial of License)

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

#### FOURTH CAUSE FOR DISCIPLINE

(Violation of the Pharmacy Law)

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

#### PRIOR DISCIPLINE

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

#### PRAYER

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

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

## BEFORE THE DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the M	latter of th	e Accusation	Against:
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Case No. 2781

DAVID LEE HUYNH

6251 Lena Woodland Hills, CA 91367

Pharmacist License No. RPH-52876

Respondent.

OAH No. L-2005070318

#### **DECISION AND ORDER**

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

This Decision shall	become effective on _	April 5, 2006
It is so ORDERED	March 6, 2006	·

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

Ву

STANLEY W. GOLDENBERG

Board President

1 2 3 4 5 6	BILL LOCKYER, Attorney General of the State of California SHARON F. COHEN, R.N. Supervising Deputy Attorney General BARRY G. THORPE, State Bar No. 126422 Deputy Attorney General California Department of Justice 300 So. Spring Street, Suite 1702 Los Angeles, CA 90013 Telephone: (213) 897-5845 Facsimile: (213) 897-2804	.*				
• 7	Attorneys for Complainant					
8 9 10	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA					
11	In the Matter of the Accusation Against: Case No. 2781					
12	DAVID LEE HUYNH OAH No. L-2005070318					
13	6251 Lena Woodland Hills, CA 91367 STIPULATED SETTLEMENT AND					
14	Pharmacist License No. 52876  DISCIPLINARY ORDER					
15	Respondent.					
16						
17	IT IS HEREBY STIPULATED AND AGREED by and between the parties to th	ıe				
18	above-entitled proceedings that the following matters are true:					
19	<u>PARTIES</u>					
20	1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of					
21	Pharmacy (Board), Department of Consumer Affairs. Complainant brought this action solely in	1				
22	her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the					
23						
24	2. Respondent DAVID LEE HUYNH (Respondent) is represented in this					
25	proceeding by attorney Herbert Weinberg, whose address is Van Etten Suzumoto & Becket LLI	Ρ,				
26	1620 26th Street, Suite 6000 North, Santa Monica, CA 90404.					
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9. Respondent agrees that his pharmacist license is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

#### RESERVATION

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

#### CONTINGENCY

- 11. 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.
- 12. 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 Pharmacist License No. 52876 issued to Respondent is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. Actual Suspension - Pharmacist. Pharmacist License No. 52876, issued to Respondent, shall be actually suspended upon the effective date of this decision, and Respondent shall not engage in the practice of pharmacy until the Pharmacists Recovery Program (PRP) has made a determination that Respondent is fit to practice safely and independently. Respondent may enter into a treatment contract with the PRP, and seek a determination from the PRP that he is fit to practice prior to the effective date of this decision.

During suspension, Respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices or controlled substances are maintained. Respondent shall not practice

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

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

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

Respondent shall report any of the following occurrences to the Board, in writing, within 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 contendere 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 and federal agency which involves Respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for any drug, device or controlled substance.
- 3. Reporting to the Board. Respondent shall report to the Board quarterly. The report shall be made either in person or in writing, as directed. Respondent shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the Board.

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

- 5. Cooperation with Board Staff. Respondent shall cooperate with the Board's inspectional program and in the Board's monitoring and investigation of Respondent's compliance with the terms and conditions of his probation. Failure to comply shall be considered a violation of probation.
- 6. Continuing Education. Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the Board.
- 7. Notice to Employers. Respondent shall notify all present and prospective employers of the decision in Accusation Case No.2781 and the terms, conditions and restrictions imposed on Respondent by the decision. Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking new employment, Respondent shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in writing acknowledging the employer has read the decision in Accusation Case No. 2781.

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

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

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

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

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

- associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation.
- 11. Status of License. Respondent shall, at all times while on probation, maintain an active current license with the Board, including any period during which suspension or probation is tolled.

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

12. License Surrender while on Probation/Suspension. Following the effective date of this decision, should Respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender his license to the Board for surrender. The Board 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.

Upon acceptance of the surrender, Respondent shall relinquish his pocket license to the Board within 10 days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license from the Board for three 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.

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

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

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

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

15. Violation of Probation. 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 which was stayed. 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 extended, until the petition to revoke probation or accusation is heard and decided.

If 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 which was stayed.

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

# 17. Rehabilitation Program - Pharmacists Recovery Program (PRP).

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

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

18. 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 a drug screening program approved by the Board. The length of time shall be for the entire probation period and the frequency of testing will be determined by the Board. At all times Respondent shall fully cooperate with the Board, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics,

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hyppodics, dangerous drags or other controlled additioness. Follows to submit to testing as: directed shall constitute a violation of probation. Any confirmed positive dies tost shall result: 3 in the impediate suspension of practice by Respondent. Respondent may not resume that practice of pharmacy until notified by the Board in writing. 4

Absesse from Drugs and Alcohol Use. Respondent shall completely 19. aliated in from the possession on uses of alcoholl, controlled substances, dangerous dutes and their associated parapherentia except when the diseas are lawfully prescribed by a licensed practitioner as part of a documented madical treatment. Upon request of the Board, Respondent shall provide decementation from the licensed practitioner that the prescription. was legitimately issued and is a necessary part of the treatment of the Respondent.

20. No Ownership of Framises. Respondent shall not own: have any legal or beneficial interest in, or serve as a granger, administrator, member, officer, director, associate, or parties of any business, tion, partnership, or corporation currently, or hereinafter licensed by the Board. Respondent still sell or transfer any legal or beneficial interest in any. criticy licensection the Board within 20 days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the Heard.

ACCEPTANCE.

I have carefully read the above Stipulated Settlement and Disciplinary Coder and have fully discussed it with my attorney. Horbert Weinberg, Esq. hunderstand the stipulation and file-effect it will have on my pharmacist librare. I enter librarie Supulated. Settlement and Ideolphinary Order voluntarily, knowingly, and intelligently, and agree to bebound by the Decision and Order of the Board.

DATED

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Respondent

I have read and fully discussed with Respondent DAVID LEE HUYNH the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content. DATED: HERBERT WEABURG, ESQ. Attorney for Respondent ENDORSEMENT The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board, BILL LOCKYBR, Attorney General of the State of California BARRY G/THORPE Deputy Attorney General Attorneys for Complainant DOJ Matter ID: LA2004601082 60118245,wpd 

Exhibit A
Accusation No. 2781

		)	
•	•		
•	1	BILL LOCKYER, Attorney General	
. '	2	of the State of California DESIREE PHILLIPS, State Bar No. 157464	
	3	Deputy Attorney General California Department of Justice	
	4	300 So. Spring Street, Suite 1702 Los Angeles, CA 90013	
	5	Telephone: (213) 897-2578 Facsimile: (213) 897-2804	
	6	Attorneys for Complainant	
	7		
	8	BEFORE 7	
•	9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS	
	10	STATE OF CAL	IFORNIA
	11	In the Matter of the Accusation Against:	Case No. 2781
	12	DAVID LEE HUYNH	OAH No. L-2004080387
•	13	6251 Lena Woodland Hills, CA 91367	ACCUSATION
	14	Pharmacist License No. RPH-52876	
	15	Respondent.	
	16		
•	17	Complainant alleges:	
	18	<u>PARTIF</u>	<u>cs</u>
	19	1. Patricia F, Harris (Complainant) brings this Accusation solely in l	
	20	official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer	
	21	Affairs.	
•	22	2. On or about September 5, 2001, the Board of Pharmacy (Board) issued	
	23	Pharmacist License No. RPH-52876 to David Lee Huynh (Respondent). The pharmacist license	
	24	was in full force and effect at all times relevant to the charges brought herein and will expire on	
	25	October 31, 2006, unless renewed.	
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# <u>JURISDICTION</u>

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- 3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.
- 4. Section 118, subdivision (b), of the Code provides 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.

#### 5. Section 490 of the Code states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which 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:"

#### 6. Section 4022 of the Code states:

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

- "(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only,' or words of similar import.
- "(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

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Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code,

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

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

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

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

#### 13. 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."

- 14. Health & Safety Code section 11170 states that, "[n]o person shall prescribe, administer, or furnish a controlled substance for himself."
  - 15. Health and Safety Code section 11350, subdivision (a), states:

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

16. Section 125.3, subdivision (a), of the Code 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."

#### 17. DANGEROUS DRUGS / CONTROLLED SUBSTANCES

- a. "Ambien," a brand name for zolpidem tartrate, a nonbarbiturate hypnotic, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(32), and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.
- b. "Norco," a brand name for hydrocodone bitartrate with acetaminophen, is a Schedule III controlled substance pursuant to Health and Safety Code Section 11056, subdivision (e)(4), and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.
- c. "Soma," a brand name for carisoprodol, is categorized as a dangerous drug pursuant to section 4022 of the Code.
- d. "Vicodin" or "Vicodin ES," a brand name for hydrocodone bitartrate with acetaminophen, is a Schedule III controlled substance pursuant to Health and Safety Code Section 11056, subdivision (e)(4), and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

## FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crimes)

- 18. Respondent has subjected his license to discipline pursuant to sections 4300, 4301(l), 4311(c), and 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct, in that, Respondent was convicted of crimes substantially related to the qualifications, functions or duties of a pharmacist, as follows:
- a. On or about March 28, 2003, Respondent was convicted, on a plea of noto contendere, of one count of violating Vehicle Code section 23152(a) (driving under the influence of alcohol or drugs), a misdemeanor, in the Los Angeles Municipal Court, Van Nuys Judicial District, Case No. 3VN00434, entitled *People v. David Huvnh*. The circumstances surrounding

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

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- b. On or about June 6, 2003, Respondent was convicted on his plea of guilty of one count of violating Health and Safety Code section 11350(a) (possession of narcotic controlled substance, to wit: opiate (hydrocodone)), a felony, in the Los Angeles Municipal Court, Beverly Hills Judicial District, Case No. SA048734, entitled *People v. David Huynh*. Entry of judgment was deferred for 24 months. The circumstances surrounding the conviction are that on or about March 9, 2003, Respondent was arrested by the California Highway Patrol (CHP) after he rear-ended a vehicle. CHP officers noted that Respondent's gait and balance were unsteady, his speech was slurred, and he seemed disoriented. Respondent was unable to perform field sobriety tests as demonstrated. Subsequently, Respondent was searched and 3 pills were found in his left rear pants pocket. Two of the pills were identified as Soma, and the other pill was identified as Vicodin. Respondent submitted a urine sample, which tested positive for opiates.
- c. On or about October 24, 2003, Respondent was convicted on his plea of nolo contendere of one count of violating Vehicle Code section 23152(a) (driving under the influence of alcohol/drugs), a misdemeanor, in the Los Angeles Municipal Court, Van Nuys Judicial District, Case No. 3VN01574, entitled *People* v. *David Huynh*. The circumstances surrounding the conviction are that on or about April 1, 2003, Respondent was driving a motor vehicle while under the influence of an alcoholic beverage or a drug.
- d. On or about October 24, 2003, Respondent was convicted on his plea of nolo contendere of one count of violating Vehicle Code section 23152(a) (driving under the influence of alcohol/drugs), a misdemeanor, in the Los Angeles Municipal Court, Van Nuys

1 Judicial District, Case No. 3VN02155, entitled People v. David Huynh. The circumstances 2 surrounding the conviction are that on or about May 2, 2003, Respondent was arrested by 3 California Highway Patrol officers following a solo roll-over collision. Approximately 30 prescription pills (8 Vicodin, 2 Norco, 7 Ambien, and 13 Soma) were found loose throughout 4 5 Respondent's vehicle by a CHP officer. Respondent admitted to one of the arresting officers that 6 he had approximately 47 pills (20 Vicodin, 15 Soma, 10 Ambien, and 2 Norco) loose in the 7 glove box of his vehicle. Respondent was able to provide a prescription for the Vicodin ES pills, 8 only. Respondent admitted to buying the Norco pills in Mexico. 9 SECOND CAUSE FOR DISCIPLINE 10 (Violation of a Statute Regulating Controlled Substances/Dangerous Drugs) 11 19. Respondent has subjected his license to discipline pursuant to sections 12 4300 and 4301(j) of the Code, on the grounds of unprofessional conduct, in that Respondent

## THIRD CAUSE FOR DISCIPLINE

violated Health and Safety Code section 11350(a), a statute regulating controlled substances and

dangerous drugs, as described above in paragraph 18(b).

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

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

#### FOURTH CAUSE FOR DISCIPLINE

(Furnish, Administer Controlled Substances to Himself)

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

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# FIFTH CAUSE FOR DISCIPLINE (Furnish Dangerous Drugs to Himself)

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

#### SIXTH CAUSE FOR DISCIPLINE

(Use of Drugs in Dangerous/Injurious Manner)

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

#### SEVENTH CAUSE FOR DISCIPLINE

(Actions Warranting Denial of License)

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

#### EIGHTH CAUSE FOR DISCIPLINE

(Violation of the Pharmacy Law)

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

#### 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 Pharmacist License No. RPH-52876, issued to David Lee Huynh;
- 2. Ordering David Lee Huynh to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and

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

DATED:

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