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

In the Matter of the Accusation Against:

Case No. 4800

**KLEIST PHAM
10672 Mast Avenue
Garden Grove, CA 92843**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

**Pharmacy Technician Registration
No. TCH 61136**

Respondent.

FINDINGS OF FACT

1. On or about March 27, 2014, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4800 against Kleist Pham (Respondent) before the Board of Pharmacy. (A copy of the Accusation attached as Exhibit A.)

2. On or about February 10, 2005, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 61136 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4800, and will expire on April 30, 2016, unless renewed.

3. On or about April 3, 2014, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4800, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

1 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
2 is required to be reported and maintained with the Board. Respondent's address of record was
3 and is:

4 10672 Mast Avenue
5 Garden Grove, CA 92843

6 4. Service of the Accusation was effective as a matter of law under the provisions of
7 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
8 124.

9 5. On or about April 4, 2014, the Domestic Return Receipt for the aforementioned
10 documents served by Certified Mail was signed acknowledging service.

11 6. Government Code section 11506 states, in pertinent part:

12 (c) The respondent shall be entitled to a hearing on the merits if the respondent
13 files a notice of defense, and the notice shall be deemed a specific denial of all parts
14 of the accusation not expressly admitted. Failure to file a notice of defense shall
15 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
16 may nevertheless grant a hearing.

17 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
18 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
19 4800.

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

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

25 9. Pursuant to its authority under Government Code section 11520, the Board finds
26 Respondent is in default. The Board will take action without further hearing and, based on the
27 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
28 taking official notice of all the investigatory reports, exhibits and statements contained therein on
file at the Board's offices regarding the allegations contained in Accusation No. 4800, finds that
the charges and allegations in Accusation No. 4800, are separately and severally, found to be true
and correct by clear and convincing evidence.

1 10. Taking official notice of its own internal records, pursuant to Business and
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
3 and Enforcement is \$642.50 as of April 25, 2014.

4 **DETERMINATION OF ISSUES**

5 1. Based on the foregoing findings of fact, Respondent Kleist Pham has subjected his
6 Pharmacy Technician Registration No. TCH 61136 to discipline.

7 2. The agency has jurisdiction to adjudicate this case by default.

8 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
9 Registration based upon the following violations alleged in the Accusation which are supported
10 by the Default Decision Investigatory Evidence Packet in this case.

11 a. Respondent has subjected his registration to discipline under sections 490 and
12 4301, subdivision (l) of the Code in that on or about May 27, 2010, in a criminal proceeding
13 entitled *People of the State of California v. Kleist Bach Pham*, in Orange County Superior Court,
14 case number 09HM01746, Respondent was convicted on his plea of guilty to violating Penal
15 Code section 148, subdivision (a)(1), resisting and obstructing an officer, a misdemeanor, a crime
16 that is substantially related to the qualifications, duties, and functions of a pharmacy technician.

17 b. Respondent has subjected his registration to discipline under sections 490 and
18 4301, subdivision (l) of the Code in that on or about May 27, 2010, in a criminal proceeding
19 entitled *People of the State of California v. Kleist Bach Pham*, in Orange County Superior Court,
20 case number 09WM08892, Respondent was convicted on his plea of guilty to violating Penal
21 Code section 148.3, subdivision (a), filing a false report of an emergency, a misdemeanor, a crime
22 that is substantially related to the qualifications, duties, and functions of a pharmacy technician.

23 c. Respondent has subjected his registration to discipline under sections 490 and
24 4301, subdivision (l) of the Code in that on or about May 27, 2010, in a criminal proceeding
25 entitled *People of the State of California v. Kleist Bach Pham*, in Orange County Superior Court,
26 case number 09WM09314, Respondent was convicted on his plea of guilty to violating Penal
27 Code section 148.3, subdivision (a), filing a false report of an emergency, a misdemeanor, a crime
28 that is substantially related to the qualifications, duties, and functions of a pharmacy technician.

1 d. Respondent has subjected his registration to discipline under sections 490 and
2 4301, subdivision (l) of the Code in that on or about February 20, 2013, in a criminal proceeding
3 entitled *People of the State of California v. Kleist Bach Pham, aka Quoc Hung B. Pham, aka*
4 *Kleist Pham, aka Quoc Hongb Pham*, in Orange County Superior Court, case number
5 12WM10068, Respondent was convicted on his plea of guilty to violating Penal Code section
6 148, subdivision (a)(1), resisting and obstructing an officer, a misdemeanor, a crime that is
7 substantially related to the qualifications, duties, and functions of a pharmacy technician.

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ORDER

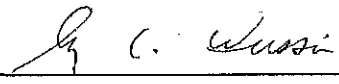
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 61136, heretofore issued to Respondent Kleist Pham, is revoked.

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

This Decision shall become effective on June 20, 2014.

It is so ORDERED May 21, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
STAN C. WEISSER
Board President

DOJ Matter ID: SD2013705530

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11
12 In the Matter of the Accusation Against:
13 **KLEIST PHAM**
10672 Mast Avenue
14 Garden Grove, CA 92843
15 **Pharmacy Technician Registration**
No. TCH 61136
16
17 Respondent.

Case No. 4800
ACCUSATION

18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
23 2. On or about February 10, 2005, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 61136 to Kleist Pham (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on April 30, 2014, unless renewed.

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JURISDICTION

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

16 4. Section 4300, subdivision (a) of the Code states "Every license issued may be
17 suspended or revoked."

18 5. Section 4300.1 of the Code states:

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

STATUTORY PROVISIONS

25 6. Section 482 of the Code states:

26 Each board under the provisions of this code shall develop criteria to evaluate
27 the rehabilitation of a person when:

- 28 (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation
furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
revoke a license on the ground that the licensee has been convicted of a crime substantially
related to the qualifications, functions, or duties of the business or profession for which the
license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a
board within the department pursuant to law to deny an application for a license or to
suspend or revoke a license or otherwise take disciplinary action against a person who
holds a license, upon the ground that the applicant or the licensee has been convicted
of a crime substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order

1 to fix the degree of discipline or to determine if the conviction is substantially related
2 to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 4301 of the Code states:

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

10

11 (l) The conviction of a crime substantially related to the qualifications,
12 functions, and duties of a licensee under this chapter. The record of conviction of a
13 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
14 States Code regulating controlled substances or of a violation of the statutes of this
15 state regulating controlled substances or dangerous drugs shall be conclusive
16 evidence of unprofessional conduct. In all other cases, the record of conviction shall
17 be conclusive evidence only of the fact that the conviction occurred. The board may
18 inquire into the circumstances surrounding the commission of the crime, in order to
19 fix the degree of discipline or, in the case of a conviction not involving controlled
20 substances or dangerous drugs, to determine if the conviction is of an offense
21 substantially related to the qualifications, functions, and duties of a licensee under this
22 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
23 contendere is deemed to be a conviction within the meaning of this provision. The
24 board may take action when the time for appeal has elapsed, or the judgment of
25 conviction has been affirmed on appeal or when an order granting probation is made
26 suspending the imposition of sentence, irrespective of a subsequent order under
27 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
28 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information, or indictment.

. . . .

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, states:

. . . .

(b) When considering the suspension or revocation of a facility or a personal
License on the ground that the licensee or the registrant has been convicted of a
crime, the board, in evaluating the rehabilitation of such person and his present
eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).

1 (4) Whether the licensee has complied with all terms of parole, probation,
2 restitution or any other sanctions lawfully imposed against the licensee.

3 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

9 COSTS

10 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
11 administrative law judge to direct a licentiate found to have committed a violation or violations of
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
14 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
15 included in a stipulated settlement.

16 FIRST CAUSE FOR DISCIPLINE

17 (May 27, 2010 Criminal Conviction for Resisting a Police Officer on January 22, 2009)

18 13. Respondent has subjected his registration to discipline under sections 490 and 4301,
19 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
20 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

21 a. On or about May 27, 2010, in a criminal proceeding entitled *People of the State*
22 *of California v. Kleist Bach Pham*, in Orange County Superior Court, case number 09HM01746,
23 Respondent was convicted on his plea of guilty to violating Penal Code section 148, subdivision
24 (a)(1), resisting and obstructing an officer, a misdemeanor.

25 b. As a result of the conviction, on or about May 27, 2010, Respondent was
26 sentenced to serve 18 days in the Orange County Jail, with credit for 18 days, and granted three
27 years summary probation. Respondent was further ordered to complete 12 days in the
28 CalTrans/Physical Labor Program, pay fees, fines, and restitution.

1 c. The facts that led to the conviction are that on or about the evening of January
2 22, 2009, the Newport Beach Police Department responded to a traffic collision. A witness stated
3 he was stopped at a red light behind a vehicle driven by Respondent. As the light turned green,
4 both vehicles accelerated, then Respondent suddenly slammed on his brakes. The witness stated
5 he could not avoid colliding with Respondent. Respondent told the officers that he braked
6 because an animal ran into the roadway, but he became irate when asked to describe the animal or
7 give further details of the collision. Respondent complained of neck pain and asked for an
8 ambulance, however, when the ambulance arrived he refused treatment. Respondent got back
9 into his vehicle and fled the scene; officers attempted to locate him with negative results.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(May 27, 2010 Criminal Conviction for Filing a False Emergency Report on July 17, 2009)**

12 14. Respondent has subjected his registration to discipline under sections 490 and 4301,
13 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
14 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

15 a. On or about May 27, 2010, in a criminal proceeding entitled *People of the State*
16 *of California v. Kleist Bach Pham*, in Orange County Superior Court, case number 09WM08892,
17 Respondent was convicted on his plea of guilty to violating Penal Code section 148.3, subdivision
18 (a), filing a false report of an emergency, a misdemeanor.

19 b. As a result of the conviction, on or about May 27, 2010, the court suspended
20 sentence and Respondent was ordered to pay fees and fines.

21 c. The facts that led to the conviction are that on or about the morning of July 17,
22 2009, officers from the Garden Grove Police Department responded to Respondent's emergency
23 call stating that his brother was threatening him with a knife. The officers established that the
24 brother had not threatened Respondent with a knife, and that Respondent had been arrested for
25 the same offense eleven days earlier, as described in paragraph 15, below. Respondent was
26 arrested for filing a false report of an emergency.

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1 THIRD CAUSE FOR DISCIPLINE

2 (May 27, 2010 Criminal Conviction for Filing a False Emergency Report on July 17, 2009)

3 15. Respondent has subjected his registration to discipline under sections 490 and 4301,
4 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
5 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

6 a. On or about May 27, 2010, in a criminal proceeding entitled *People of the State*
7 *of California v. Kleist Bach Pham*, in Orange County Superior Court, case number 09WM09314,
8 Respondent was convicted on his plea of guilty to violating Penal Code section 148.3, subdivision
9 (a), filing a false report of an emergency, a misdemeanor. Pursuant to a plea agreement, the
10 court dismissed an additional count of violating Penal Code section 148, subdivision (a)(1),
11 resisting and obstructing an officer, a misdemeanor.

12 b. As a result of the conviction, on or about May 27, 2010, the court suspended
13 sentence and Respondent was ordered to pay fees and fines.

14 c. The facts that led to the conviction are that on or about the evening of July 6,
15 2009, an officer from the Garden Grove Police Department responded to a hang-up 9-1-1 call.
16 The caller, later identified as Respondent, stated that he wanted the people who lived at the back
17 of his house hanged. Upon arrival at the residence, the officers spoke to the owner who stated he
18 had not called 9-1-1, but he had two sons living in the rear of the house. After the owner
19 unlocked the door for Respondent's room, they encountered Respondent who yelled at the officer
20 to leave. While attempting to bring Respondent outside to conduct a pat down search,
21 Respondent became uncooperative and began fighting the officer. While on the ground,
22 Respondent kept attempting to reach into his waistband. Another officer arrived and they were
23 able to handcuff Respondent. During questioning, Respondent stated that he called 9-1-1 because
24 his neighbors were bugging him and he wanted them hanged or arrested.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(February 20, 2013 Criminal Conviction for Resisting a Police Officer on September 22, 2012)**

3 16. Respondent has subjected his registration to discipline under sections 490 and 4301,
4 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
5 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

6 a. On or about February 20, 2013, in a criminal proceeding entitled *People of the*
7 *State of California v. Kleist Bach Pham, aka Quoc Hung B. Pham, aka Kleist Pham, aka Quoc*
8 *Hongb Pham*, in Orange County Superior Court, case number 12WM10068, Respondent was
9 convicted on his plea of guilty to violating Penal Code section 148, subdivision (a)(1), resisting
10 and obstructing an officer, a misdemeanor.

11 b. As a result of the conviction, on or about February 20, 2013, Respondent was
12 sentenced to serve six days in the Orange County Jail, with credit for six days, and granted three
13 years summary probation. Respondent was further ordered to submit to a Fourth Amendment
14 waiver, pay fees and fines, and comply with probation terms.

15 c. The facts that led to the conviction are that on or about the evening of
16 September 22, 2012, officers with the Garden Grove Police Department arrived at Respondent's
17 residence to serve two warrants for his arrest. A family member led the officers to Respondent's
18 bedroom in a back yard shed. Respondent was told he was under arrest for the warrants and was
19 handcuffed. As Respondent was putting on his shoes, he became agitated and started kicking in
20 the direction of an officer. Respondent refused to leave his bedroom and became combative. The
21 officers struggled with Respondent; Respondent removed a flashlight from one officer's duty belt.
22 Respondent eventually complied after one officer threw a single punch into Respondent's torso.
23 Respondent was placed in hobbles and transported to jail.

24 **PRAYER**

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

27 1. Revoking or suspending Pharmacy Technician Registration Number TCH 61136,
28 issued to Kleist Pham;

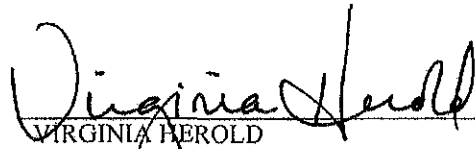
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2. Ordering Kleist Pham to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED:

3/27/14



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

SD2013705530