

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

In the Matter of the Accusation Against:

**JAMES BAO NGUYEN  
641 Gaybar Ave.  
West Covina, CA 91790**

**Pharmacist License No. RPH 65281**

Respondent.

Case No. 5385

OAH No. 2016050755

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

**DECISION AND ORDER**

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

This decision shall become effective on February 10, 2017.

It is so ORDERED on January 11, 2017.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
Amy Gutierrez, Pharm.D.  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
2 THOMAS L. RINALDI  
Supervising Deputy Attorney General  
3 M. TRAVIS PEERY  
Deputy Attorney General  
4 State Bar No. 261887  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-0962  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

11 **JAMES BAO NGUYEN**  
12 **641 Gaybar Ave.**  
13 **West Covina, CA 91790**

14 **Pharmacist License No. RPH 65281**

15 Respondent.

Case No. 5385

OAH No. 2016050755

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
17 entitled proceedings that the following matters are true:

18 PARTIES

19 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy  
20 (Board). She brought this action solely in her official capacity and is represented in this matter by  
21 Kamala D. Harris, Attorney General of the State of California, by M. Travis Peery, Deputy  
22 Attorney General.

23 2. Respondent James Bao Nguyen<sup>1</sup> (Respondent) is represented in this proceeding by  
24 attorney Ivan Petrzelka, Pharm.D., J.D., whose address is:  
25 2855 Michelle Drive, Suite 180  
26 Irvine, CA 92606-1027

27  
28 <sup>1</sup> Respondent's middle name was incorrectly spelled as "Boa" in the accusation.





1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Pharmacist License No. RPH 65281 issued to Respondent  
3 is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5)  
4 years on the following terms and conditions.

5 **1. Obey All Laws**

6 Respondent shall obey all state and federal laws and regulations.

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

- 9 • an arrest or issuance of a criminal complaint for violation of any provision of the  
10 Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
11 substances laws
- 12 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any  
13 criminal complaint, information or indictment
- 14 • a conviction of any crime
- 15 • discipline, citation, or other administrative action filed by any state or federal agency  
16 which involves respondent's pharmacist license or which is related to the practice of  
17 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging  
18 for any drug, device or controlled substance.

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

20 **2. Report to the Board**

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

1           **3. Interview with the Board**

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

7           **4. Cooperate with Board Staff**

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

11           **5. Continuing Education**

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

14           **6. Notice to Employers**

15           During the period of probation, respondent shall notify all present and prospective  
16 employers of the decision in case number 5385 and the terms, conditions and restrictions imposed  
17 on respondent by the decision, as follows:

18           Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
19 respondent undertaking any new employment, respondent shall cause his direct supervisor,  
20 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's  
21 tenure of employment) and owner to report to the board in writing acknowledging that the listed  
22 individual(s) has/have read the decision in case number 5385, and terms and conditions imposed  
23 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)  
24 submit timely acknowledgment(s) to the board.

25           If respondent works for or is employed by or through a pharmacy employment service,  
26 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity  
27 licensed by the board of the terms and conditions of the decision in case number 5385 in advance  
28

1 of the respondent commencing work at each licensed entity. A record of this notification must be  
2 provided to the board upon request.

3 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
4 (15) days of respondent undertaking any new employment by or through a pharmacy employment  
5 service, respondent shall cause his direct supervisor with the pharmacy employment service to  
6 report to the board in writing acknowledging that he has read the decision in case number 5385  
7 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure  
8 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

16 **7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**  
17 **Designated Representative-in-Charge, or Serving as a Consultant**

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

22 **8. Reimbursement of Board Costs**

23 As a condition precedent to successful completion of probation, respondent shall pay to the  
24 board its costs of investigation and prosecution in the amount of \$10,413.50. Respondent shall  
25 make payments pursuant to a payment plan approved by the board.

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

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

3           **9. Probation Monitoring Costs**

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

8           **10. Status of License**

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

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

16           **11. License Surrender While on Probation/Suspension**

17           Following the effective date of this decision, should respondent cease practice due to  
18 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,  
19 respondent may tender his license to the board for surrender. The board or its designee shall have  
20 the discretion whether to grant the request for surrender or take any other action it deems  
21 appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent  
22 will no longer be subject to the terms and conditions of probation. This surrender constitutes a  
23 record of discipline and shall become a part of the respondent's license history with the board.

24           Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to  
25 the board within ten (10) days of notification by the board that the surrender is accepted.

26           Respondent may not reapply for any license from the board for three (3) years from the effective  
27 date of the surrender. Respondent shall meet all requirements applicable to the license sought as  
28



1 of the date the application for that license is submitted to the board, including any outstanding  
2 costs.

3 **12. Notification of a Change in Name, Residence Address, Mailing Address or**  
4 **Employment**

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

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

12 **13. Tolling of Probation**

13 Except during periods of suspension, respondent shall, at all times while on probation, be  
14 employed as a pharmacist in California for a minimum of forty (40) hours per calendar month.  
15 Any month during which this minimum is not met shall toll the period of probation, i.e., the  
16 period of probation shall be extended by one month for each month during which this minimum is  
17 not met. During any such period of tolling of probation, respondent must nonetheless comply  
18 with all terms and conditions of probation.

19 Should respondent, regardless of residency, for any reason (including vacation) cease  
20 practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California,  
21 respondent must notify the board in writing within ten (10) days of the cessation of practice, and  
22 must further notify the board in writing within ten (10) days of the resumption of practice. Any  
23 failure to provide such notification(s) shall be considered a violation of probation.

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

27 "Cessation of practice" means any calendar month during which respondent is  
28 not practicing as a pharmacist for at least forty (40) hours, as defined by Business and

1 Professions Code section 4000 et seq . "Resumption of practice" means any calendar  
2 month during which respondent is practicing as a pharmacist for at least forty (40)  
3 hours as a pharmacist as defined by Business and Professions Code section 4000 et  
4 seq.

5 **14. Violation of Probation**

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

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

18 **15. Completion of Probation**

19 Upon written notice by the board or its designee indicating successful completion of  
20 probation, respondent's license will be fully restored.

21 **16. Pharmacists Recovery Program (PRP)**

22 Within thirty (30) days of the effective date of this decision, respondent shall contact the  
23 Pharmacists Recovery Program (PRP) for evaluation. If deemed appropriate following the  
24 evaluation, Respondent shall immediately thereafter enroll, successfully participate in, and  
25 complete the treatment contract and any subsequent addendums as recommended and provided by  
26 the PRP and as approved by the board or its designee. The costs for PRP participation shall be  
27 borne by the respondent. If the results of the evaluation indicate the PRP is not appropriate,  
28 Respondent shall not be required to comply with this term.

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

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

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

10 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a  
11 licensed practitioner as part of a documented medical treatment shall result in the automatic  
12 suspension of practice by respondent and shall be considered a violation of probation.

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

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

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

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

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

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

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

10 **17. Random Drug Screening**

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

27 During suspension, respondent shall not enter any pharmacy area or any portion of the  
28 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of

1 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices  
2 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act  
3 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient  
4 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the  
5 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs  
6 and controlled substances. Respondent shall not resume practice until notified by the board.

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

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

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

15 **18. Abstain from Drugs and Alcohol Use**

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

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1           **19. Prescription Coordination and Monitoring of Prescription Use**

2           Within thirty (30) days of the effective date of this decision, respondent shall submit to the  
3 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,  
4 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's  
5 history with the use of controlled substances and/or dangerous drugs and who will coordinate and  
6 monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-  
7 altering drugs. The approved practitioner shall be provided with a copy of the board's Accusation  
8 and decision. A record of this notification must be provided to the board upon request.

9           Respondent shall sign a release authorizing the practitioner to communicate with the board about  
10 respondent's treatment(s). The coordinating physician, nurse practitioner, physician assistant, or  
11 psychiatrist shall report to the board on a quarterly basis for the duration of probation regarding  
12 respondent's compliance with this condition. If any substances considered addictive have been  
13 prescribed, the report shall identify a program for the time limited use of any such substances.  
14           The board may require that the single coordinating physician, nurse practitioner, physician  
15 assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive  
16 medicine. Should respondent, for any reason, cease supervision by the approved practitioner,  
17 respondent shall notify the board immediately and, within thirty (30) days of ceasing treatment,  
18 submit the name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist  
19 of respondent's choice to the board or its designee for its prior approval. Failure to timely submit  
20 the selected practitioner or replacement practitioner to the board for approval, or to ensure the  
21 required reporting thereby on the quarterly reports, shall be considered a violation of probation.

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

27           During suspension, respondent shall not enter any pharmacy area or any portion of the  
28 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of

1 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices  
2 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act  
3 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient  
4 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the  
5 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs  
6 and controlled substances. Respondent shall not resume practice until notified by the board.

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

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

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

#### 15 20. Remedial Education

16 Within sixty (60) days of the effective date of this decision, respondent shall submit to the  
17 board or its designee, for prior approval, an appropriate program of remedial education related to  
18 substance abuse. The program of remedial education shall consist of at least ten (10) hours,  
19 which shall be completed within two (2) years at respondent's own expense. All remedial  
20 education shall be in addition to, and shall not be credited toward, continuing education (CE)  
21 courses used for license renewal purposes.

22 Failure to timely submit or complete the approved remedial education shall be considered a  
23 violation of probation. The period of probation will be automatically extended until such  
24 remedial education is successfully completed and written proof, in a form acceptable to the board,  
25 is provided to the board or its designee.

26 Following the completion of each course, the board or its designee may require the  
27 respondent, at his own expense, to take an approved examination to test the respondent's  
28 knowledge of the course. If the respondent does not achieve a passing score on the examination,

1 this failure shall be considered a violation of probation. Any such examination failure shall  
2 require respondent to take another course approved by the board in the same subject area.

3 **21. Supervised Practice**

4 During the period of probation, respondent shall practice only under the supervision of a  
5 licensed pharmacist not on probation with the board. Upon and after the effective date of this  
6 decision, respondent shall not practice pharmacy and his license shall be automatically suspended  
7 until a supervisor is approved by the board or its designee. Unless determined otherwise by the  
8 Pharmacist Recovery Program (should Respondent be required to enroll in that program), the  
9 supervision shall be:

10 Partial - At least 25% of a work week

11 Within thirty (30) days of the effective date of this decision, respondent shall have his  
12 supervisor submit notification to the board in writing stating that the supervisor has read the  
13 decision in case number 5385 and is familiar with the required level of supervision as determined  
14 by the board or its designee. It shall be the respondent's responsibility to ensure that his  
15 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the  
16 board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely  
17 acknowledgements to the board shall be considered a violation of probation.

18 If respondent changes employment, it shall be the respondent's responsibility to ensure that  
19 his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to  
20 the board. Respondent shall have his new supervisor, within fifteen (15) days after employment  
21 commences, submit notification to the board in writing stating the direct supervisor and  
22 pharmacist-in-charge have read the decision in case number 5385 and is familiar with the level of  
23 supervision as determined by the board. Respondent shall not practice pharmacy and his license  
24 shall be automatically suspended until the board or its designee approves a new supervisor.  
25 Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely  
26 acknowledgements to the board shall be considered a violation of probation.

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

28 During suspension, respondent shall not enter any pharmacy area or any portion of the



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

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

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

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

16 **22. No Ownership of Licensed Premises**

17 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,  
18 administrator, member, officer, director, trustee, associate, or partner of any business, firm,  
19 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell  
20 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)  
21 days following the effective date of this decision and shall immediately thereafter provide written  
22 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide  
23 documentation thereof shall be considered a violation of probation.

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**Exhibit A**

**Accusation No. 5385**

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 LESLIE A. WALDEN  
Deputy Attorney General  
4 State Bar No. 196882  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-3465  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

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8 **BEFORE THE**  
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10 In the Matter of the Accusation Against:

Case No. 5385

11 **JAMES BOA NGUYEN**  
12 **641 Gaybar Ave.**  
13 **West Covina, CA 91790**

**ACCUSATION**

14 **Pharmacist License No. RPH 65281**

15 Respondent.

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18 Complainant alleges:

19  
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 March 2, 2011, the Board of Pharmacy issued Pharmacist License  
24 Number RPH 65281 to James Boa Nguyen (Respondent). The Pharmacist License was in full  
25 force and effect at all times relevant to the charges brought herein and will expire on September  
26 30, 2016, unless renewed.

27 ////

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1           "(2) Continuing medical or psychiatric treatment.

2           "(3) Restriction of type or circumstances of practice.

3           "(4) Continuing participation in a board-approved rehabilitation program.

4           "(5) Abstention from the use of alcohol or drugs.

5           "(6) Random fluid testing for alcohol or drugs.

6           "(7) Compliance with laws and regulations governing the practice of pharmacy.

7           "(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary  
8 certificate of licensure for any violation of the terms and conditions of probation. Upon  
9 satisfactory completion of probation, the board shall convert the probationary certificate to a  
10 regular certificate, free of conditions.

11           "(e) The proceedings under this article shall be conducted in accordance with Chapter 5  
12 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board  
13 shall have all the powers granted therein. The action shall be final, except that the propriety of the  
14 action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil  
15 Procedure."

16           6.       Section 4300.1 of the Code states:

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

22           7.       Section 4301 of the Code states:

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

26           "...

27           "(h) The administering to oneself, of any controlled substance, or the use of any dangerous  
28 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to

1 oneself, to a person holding a license under this chapter, or to any other person or to the public, or  
2 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
3 practice authorized by the license.

4 "...

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

7 "...

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

12 "..."

13 8. Section 4022 of the Code states

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

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

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

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

23 9. Section 4327 of the Code provides:

24 "Any person who, while on duty, sells, dispenses or compounds any drug while under the  
25 influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor."

26 10. Section 11170 of the Health and Safety Code provides:

27 "No person shall prescribe, administer, or furnish a controlled substance for himself."  
28

1 COST RECOVERY

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

8 DRUG CLASSIFICATIONS

9 12. Lyrica is the brand name for Pregabalin, and is a dangerous drug pursuant to Business  
10 and Professions Code section 4022 and a Schedule V controlled substance pursuant to Health and  
11 Safety Code section 11058. It is used to treat fibromyalgia, neuralgia and seizures.

12 13. Ativan is the brand name for Lorazepam, and is a dangerous drug pursuant to  
13 Business and Professions Code section 4022 and a Schedule IV controlled substance pursuant to  
14 Health and Safety Code section 11057 subdivision (d)(16). It is used to treat anxiety.

15 14. Klonopin is the brand name for Clonazepam, and is a dangerous drug pursuant to  
16 Business and Professions Code section 4022 and a Schedule IV controlled substance pursuant to  
17 Health and Safety Code section 11057 subdivision (d)(7). It is used to treat anxiety.

18 15. Norco is the brand name for Hydrocodone/apap 5/325, and is a dangerous drug  
19 pursuant to Business and Professions Code section 4022 and a Schedule III controlled substance  
20 pursuant to Health and Safety Code section 11056 subdivision (e)(2). It is used to treat pain.

21 16. Phenergan is the brand name for Promethazine with Codeine, and is a dangerous drug  
22 pursuant to Business and Professions Code section 4022 and a Schedule V controlled substance  
23 pursuant to Health and Safety Code section 11058 subdivision (C)(1). It is used to treat cough.

24 FIRST CAUSE FOR DISCIPLINE

25 (Unprofessional Conduct - Self-Furnishing of a Controlled Substance)

26 17. Respondent is subject to disciplinary action under sections 4301 subdivisions (o) and  
27 (j) in conjunction with Health and Safety Code section 11170 in that he violated the statutes  
28



1 regulating controlled substances in California or the United States by prescribing or furnishing  
2 controlled substances to himself. The circumstances are as follows:

3 18. From on or about September 7, 2013 through January 8, 2014, while working as a  
4 pharmacist at Vons Pharmacy 2425 located at 850 Linden Avenue in Carpinteria, California,  
5 Respondent illegally furnished to himself the following controlled substance prescriptions:

6 a) Rx 4052153, Hydrocodone/apap 5/325 mg #30 on September 18, 2013;

7 b) Rx 4052208, Lyrica 25 mg #60 on September 26, 2013;

8 c) Rx 4052209, Lorazepam 1 mg #30 on September 26, 2013;

9 d) Rx 4052221, Lyrica 150 mg #60 on September 28 2013;

10 e) Rx 4052790, Promethazine with codeine 240 ml on January 8, 2014;

11 f) Rx 4052658 Clonazepam 0.5 mg #30 on January 8, 2014;

12 g) Rx 4052843, Lyrica 150 #120 on January 18, 2014;

13 h) Rx. 4052757, Lorazepam 1 mg #30 on January 18, 2014; and

14 i) Rx 4052790, Promethazine with codeine 240 ml on January 18, 2014.

15 **SECOND CAUSE FOR DISCIPLINE**

16 (Unprofessional Conduct - Working as Pharmacist Under the Influence of Controlled Substance)

17 19. Respondent is subject to disciplinary action under sections 4301 subdivision (h) and  
18 4327 in that Respondent illegally administered to himself a controlled substance that impaired his  
19 ability to safely practice of pharmacy. The circumstances are as follows:

20 20. On or about January 20, 2014, while working as a pharmacist at Vons Pharmacy 2425  
21 located at 850 Linden Avenue in Carpinteria, California, Respondent was observed by pharmacy  
22 staff to be functioning as a pharmacist while under the influence.

23 **PRAYER**

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

26 1. Revoking or suspending Pharmacist License Number RPH 65281, issued to James  
27 Boa Nguyen;

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

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

DATED: 10/20/15 Virginia Herold

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

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