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

In the Matter of the Accusation Against:
VIET DU LE
12592 Josephine Street, Unit E
Garden Grove, CA 92841
Intern Pharmacist Registration No. INT 31273

Respondent.

Case No. 5471

**DEFAULT DECISION AND
ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about September 5, 2015, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed Accusation No. 5471 against Viet Du Le (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On or about April 11, 2013, the Board issued Intern Pharmacist Registration No. INT 31273 to Respondent. The Intern Pharmacist Registration expired on May 31, 2015, and has not been renewed.
3. On or about September 17, 2015, Respondent was served by Certified and First Class Mail copies of the Accusation No. 5471, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and

1 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
2 section 4100, is required to be reported and maintained with the Board. Respondent's address of
3 record was and is: 12592 Josephine Street, Unit E, Garden Grove, CA 92841.

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

7 5. Government Code section 11506 states, in pertinent part:

8 ...

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

14 ...

15 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
16 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
17 5471.

18 7. California Government Code section 11520 states, in pertinent part:

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

23

24 8. Pursuant to its authority under Government Code section 11520, the Board finds
25 Respondent is in default. The Board will take action without further hearing and, based on the
26 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
27 taking official notice of all the investigatory reports, exhibits and statements contained therein on
28 file at the Board's offices regarding the allegations contained in Accusation No. 5471, finds that
the charges and allegations in Accusation No. 5471, are separately and severally, found to be true
and correct by clear and convincing evidence.

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1 9. 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 \$987.50 as of October 15, 2015.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent Viet Du Le has subjected his
6 Intern Pharmacist Registration No. INT 31273 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 Intern Pharmacist
9 Registration based upon the following violations alleged in the Accusation which are supported
10 by the evidence contained in the Default Decision Evidence Packet in this case:

11 a. Respondent has subjected his Intern Pharmacist Registration to discipline under
12 Business and Professions Code sections 490 and 4301(l), in that on July 26, 2013, he was
13 convicted of violating Illinois Compiled Statutes (ICS), 625ILCS5 (Illinois Vehicle Code),
14 chapter 11 (Rules of the Road), article V (Driving While Intoxicated, Transporting Alcoholic
15 Liquor, and Reckless Driving), section 501 (Driving while under the influence of alcohol, other
16 drug or drugs, intoxicating compound or compounds or any combination thereof), subdivision
17 (a)(2), a person shall not drive or be in actual physical control of any vehicle within the state
18 while under the influence of alcohol (DUI) [625 ILCS 5/11-501(a)(2)], a class A misdemeanor.

19 b. Respondent has subjected his Intern Pharmacist Registration to discipline under
20 Business and Professions Code sections 490 and 4301(l), in that on July 21, 2014, he was
21 convicted of violating 625 ILCS 5/11-501(a)(2), DUI, a class A misdemeanor.

22 c. Respondent has subjected his Intern Pharmacist Registration to discipline under
23 Business and Professions Code section 4301, subdivision (h) in that on May 11, 2013, and May
24 26, 2014, he used alcohol to the extent and in a manner that was dangerous and injurious to
25 himself and to the public.

26 d. Respondent has subjected his Intern Pharmacist Registration to discipline under
27 Business and Professions Code section 4301, subdivision (k) in that on July 26, 2013, and July
28 21, 2014, he was convicted of misdemeanors involving the use or consumption of alcohol.

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ORDER

IT IS SO ORDERED that Intern Pharmacist Registration No. INT 31273 issued to Respondent Viet Du Le 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 January 8, 2016.

It is so ORDERED December 9, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

81172206.DOC
DOJ Matter ID:SD2015801058

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation No. 5471

(VIET DU LE)

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Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 5471

13 **VIET DU LE**
12592 Josephine Street, Unit E
14 Garden Grove, CA 92841

ACCUSATION

15 **Intern Pharmacist Registration No. INT 31273**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On April 11, 2013, the Board of Pharmacy issued Intern Pharmacist Registration
23 Number INT 31273 to Viet Du Le (Respondent). The Intern Pharmacist Registration expired on
24 May 31, 2015, and has not been renewed.

25 **JURISDICTION**

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

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4. Section 4300, subdivision (a), of the Code provides that every license issued by the Board may be suspended or revoked.

5. Section 4300.1 of the Code 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 a 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.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

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

- (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 states:

(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 nolo contendere. An 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 Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has

1 placed a significant number of statutes and regulations in question, resulting in
2 potential harm to the consumers of California from licensees who have been
3 convicted of crimes. Therefore, the Legislature finds and declares that this section
4 establishes an independent basis for a board to impose discipline upon a licensee,
and that the amendments to this section made by Chapter 33 of the Statutes of
2008 do not constitute a change to, but rather are declaratory of, existing law.

5 8. 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 not limited to, any of the following:

9
10 (h) The administering to oneself, of any controlled substance, or the use of
11 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
12 dangerous or injurious to oneself, to a person holding a license under this chapter,
or to any other person or to the public, or to the extent that the use impairs the
ability of the person to conduct with safety to the public the practice authorized by
the license.

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14 (k) The conviction of more than one misdemeanor or any felony involving
15 the use, consumption, or self-administration of any dangerous drug or alcoholic
beverage, or any combination of those substances.

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

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1 **REGULATORY PROVISIONS**

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

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

8 (1) Nature and severity of the act(s) or offense(s).

9 (2) Total criminal record.

10 (3) The time that has elapsed since commission of the act(s) or
11 offense(s).

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

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

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

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

23 **COST RECOVERY**

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

FIRST CAUSE FOR DISCIPLINE

26 (July 26, 2013 Conviction for Driving Under the Influence of Alcohol on May 11, 2013)

27 12. Respondent has subjected his Intern Pharmacist Registration to discipline under
28 Code sections 490 and 4301, subdivision (l), in that he was convicted of a crime that is

1 substantially related to the qualifications, functions, and duties of a registered intern pharmacist.

2 The circumstances are as follows:

3 a. On July 26, 2013, in a criminal proceeding entitled *The People of the State*
4 *of Illinois v. Viet Du Le*, in Cook County Circuit Court, First Municipal District, Traffic Division
5 Case Number 37805469, Respondent was convicted of violating Illinois Compiled Statutes
6 (ILCS), 625ILCS5 (Illinois Vehicle Code), chapter 11(Rules of the Road), article V (Driving
7 While Intoxicated, Transporting Alcoholic Liquor, and Reckless Driving), section 501 (Driving
8 while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds
9 or any combination thereof), subdivision (a)(2), a person shall not drive or be in actual physical
10 control of any vehicle within this State while under the influence of alcohol (DUI)[625 ILCS
11 5/11-501(a)(2)], a class A misdemeanor. Respondent was also charged with violation of 625
12 ILCS 5/11-502-A, possession of alcoholic liquor in open container while driving a vehicle upon
13 a highway; 625 ILCS 5/11-1301, stopping, standing or parking outside of business or residence
14 district; and 625 ILCS 5/12-603.1, failure to use safety belts, all petty offenses.

15 b. As a result of the conviction, on July 26, 2013, Respondent was sentenced
16 to 12 months court supervision under standard, alcohol, DUI related, and special conditions.
17 Respondent was ordered to pay all fines, costs, fees, assessments, reimbursements, and
18 restitution. Respondent was also ordered to attend a Victim Impact Panel session and perform 40
19 hours of independent community service.

20 c. The facts that led to the conviction are that on May 11, 2013, Respondent
21 stopped in the center lane and fell asleep while driving a vehicle on interstate I-55 in Chicago,
22 Illinois, resulting in a crash of two vehicles. A responding officer from the Illinois State Police
23 found Respondent still in the driver's seat of one of the vehicles. The officer opened the driver's
24 door and noticed a large laceration over Respondent's left eye. As Respondent talked, the officer
25 smelled alcohol coming from Respondent's breath and observed his slurred speech and
26 bloodshot eyes. The officer saw a half-full pint bottle of Wild Turkey brand whiskey on the
27 passenger seat floorboard. Due to his injuries, Respondent was taken to the MacNeal Hospital

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1 where he submitted to a preliminary breath test, which indicated a blood alcohol concentration
2 (BAC) of .209 percent.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(July 21, 2014 Conviction for Driving Under the Influence of Alcohol on May 26, 2014)**

5 13. Respondent has subjected his Intern Pharmacist Registration to discipline under
6 Code sections 490 and 4301, subdivision (l), in that he was convicted of a crime that is
7 substantially related to the qualifications, functions, and duties of a registered intern pharmacist.
8 The circumstances are as follows:

9 a. On July 21, 2014, in a criminal proceeding entitled *The People of the*
10 *State of Illinois v. Viet Du Le*, in Will County Circuit Court, Twelfth Judicial Circuit, Will
11 County Courthouse Case Number 14TR45415-6, Respondent was convicted on his plea of guilty
12 of violating 625 ILCS 5/11-501(a)(2), DUI, a class A misdemeanor. Respondent was also
13 charged with violation of 625 ILCS 5/11-501(a)(1), driving while having a BAC of .08 percent
14 or more; 625 ILCS 5/11-606, exceeding the regulation speed of 40 miles per hour; and 625 ILCS
15 5/11-709(a), improper lane usage.

16 b. As a result of the conviction, on July 21, 2014, Respondent was sentenced
17 to 24 months conditional discharge and ordered to pay fines, fees, and costs. Respondent was
18 also ordered to attend a Victim Impact Panel session, complete 25 counseling and aftercare
19 sessions, and perform 240 hours of community service.

20 c. The facts that led to the conviction are that on May 26, 2014, Respondent
21 illegally parked his car on the left shoulder on southbound lane 1 on interstate I-355 in Homer,
22 Illinois. A dispatched officer from the Illinois State Police located the vehicle parked earlier
23 being driven southbound on I-355. The officer followed the vehicle and observed it crossing the
24 left lane twice onto the left shoulder, and slowing down to 40 miles per hour. The officer
25 initiated an enforcement stop and Respondent complied. While talking to Respondent, the officer
26 noticed Respondent's slow response, slurred speech, and glassy bloodshot eyes. Respondent's
27 breath emitted a strong odor of alcohol. Respondent admitted to drinking one or two beers and
28 agreed to take a series of field sobriety tests, which he failed to perform as explained and

1 demonstrated. Respondent submitted to a preliminary breath test, which indicated a BAC of .166
2 percent. Thereafter, Respondent was transported to Toll Plaza 99 squad room for processing
3 where he provided a breath sample, which tested .157 percent BAC.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct - Dangerous Use of Alcohol)**

6 14. Respondent has subjected his Intern Pharmacist Registration to discipline under
7 Code section 4301, subdivision (h) in that on May 11, 2013, and May 26, 2014, he used alcohol
8 to the extent and in a manner that was dangerous and injurious to himself and to the public, as
9 described in paragraphs 12 and 13, above, which are incorporated by reference.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct - Conviction of Alcohol Related Misdemeanors)**

12 15. Respondent has subjected his Intern Pharmacist Registration to discipline under
13 Code section 4301, subdivision (k) in that on July 26, 2013, and July 21, 2014, he was convicted
14 of more than one misdemeanor involving the use or consumption of alcohol, as described in
15 paragraphs 12 and 13, above, which are incorporated by reference.

16 **PRAYER**

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

19 1. Revoking or suspending Intern Pharmacist Registration Number INT 31273,
20 issued to Viet Du Le;

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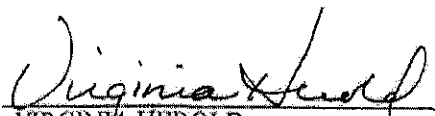
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2. Ordering Viet Du Le to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: 9/5/15


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

SD2015801058
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