

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

In the Matter of the Statement of Issues
Against:

VICTOR LEE

Pharmacist License Applicant

Respondent.

Case No. 5460

OAH No. 2015101038

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 at 5:00 p.m. on May 12, 2016.

It is so ORDERED on April 12, 2016.

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 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 ZACHARY T. FANSELOW
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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues
11 Against:

12 **VICTOR LEE**

13 **Pharmacist License Applicant**

14 Respondent.

Case No. 5460

OAH No. 2015101038

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16
17 **STIPULATED SETTLEMENT AND**
DISCIPLINARY ORDER

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

20 **PARTIES**

21 1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy.
22 She brought this action solely in her official capacity and is represented in this matter by Kamala
23 D. Harris, Attorney General of the State of California, by Zachary T. Fanselow, Deputy Attorney
24 General.

25 2. Respondent Victor Lee ("Respondent") is represented in this proceeding by attorney
26 Paul Chan, Esq., whose address is: 2311 Capitol Avenue, Sacramento, CA 95816.

27 3. On or about November 17, 2014, Respondent filed an application dated November 3,
28 2014, with the Board of Pharmacy to obtain a Pharmacist License.

1 CONTINGENCY

2 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
3 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
4 communicate directly with the Board regarding this stipulation and settlement, without notice to
5 or participation by Respondent or his counsel. By signing the stipulation, Respondent
6 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
7 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation
8 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
9 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
10 and the Board shall not be disqualified from further action by having considered this matter.

11 12. The parties understand and agree that Portable Document Format ("PDF") and
12 facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and
13 facsimile signatures thereto, shall have the same force and effect as the originals.

14 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
15 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
16 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
17 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
18 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
19 writing executed by an authorized representative of each of the parties.

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

23 DISCIPLINARY ORDER

24 IT IS HEREBY ORDERED that upon satisfaction of all statutory and regulatory
25 requirements for issuance of a license, a Pharmacist License shall be issued to Respondent Victor
26 Lee and immediately revoked. The revocation will be stayed and Respondent placed on five (5)
27 years probation on the following terms and conditions:

28 ///

1 **1. Obey All Laws**

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

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

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

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

16 **2. Report to the Board**

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

25 **3. Interview with the Board**

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

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

3 **4. Cooperate with Board Staff**

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

7 **5. Continuing Education**

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

10 **6. Notice to Employers**

11 During the period of probation, Respondent shall notify all present and prospective
12 employers of the decision in case number 5460 and the terms, conditions and restrictions imposed
13 on Respondent by the decision, as follows:

14 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
15 Respondent undertaking any new employment, Respondent shall cause his direct supervisor,
16 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
17 tenure of employment) and owner to report to the Board in writing acknowledging that the listed
18 individual(s) has/have read the decision in case number 5460, and terms and conditions imposed
19 thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or
20 supervisor(s) submit timely acknowledgment(s) to the Board.

21 If Respondent works for or is employed by or through a pharmacy employment service,
22 Respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
23 licensed by the Board of the terms and conditions of the decision in case number 5460 in advance
24 of the Respondent commencing work at each licensed entity. A record of this notification must
25 be provided to the Board upon request.

26 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
27 (15) days of Respondent undertaking any new employment by or through a pharmacy
28 employment service, Respondent shall cause his direct supervisor with the pharmacy employment

1 service to report to the Board in writing acknowledging that he has read the decision in case
2 number 5460 and the terms and conditions imposed thereby. It shall be Respondent's
3 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely
4 acknowledgment(s) to the Board.

5 Failure to timely notify present or prospective employer(s) or to cause that/those
6 employer(s) to submit timely acknowledgments to the Board shall be considered a violation of
7 probation.

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

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

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

18 **8. Probation Monitoring Costs**

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

23 **9. Status of License**

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

27 If Respondent's license expires or is cancelled by operation of law or otherwise at any time
28 during the period of probation, including any extensions thereof due to tolling or otherwise, upon

1 renewal or reapplication Respondent's license shall be subject to all terms and conditions of this
2 probation not previously satisfied.

3 **10. License Surrender While on Probation/Suspension**

4 Following the effective date of this decision, should Respondent cease practice due to
5 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
6 Respondent may tender his license to the Board for surrender. The Board or its designee shall
7 have the discretion whether to grant the request for surrender or take any other action it deems
8 appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent
9 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
10 record of discipline and shall become a part of the Respondent's license history with the Board.

11 Upon acceptance of the surrender, Respondent shall relinquish his pocket and wall license
12 to the Board within ten (10) days of notification by the Board that the surrender is accepted.
13 Respondent may not reapply for any license from the Board for three (3) years from the effective
14 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
15 of the date the application for that license is submitted to the Board, including any outstanding
16 costs.

17 **11. Notification of a Change in Name, Residence Address, Mailing Address or**
18 **Employment**

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

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

26 **12. Tolling of Probation**

27 Except during periods of suspension, Respondent shall, at all times while on probation, be
28 employed as a pharmacist in California for a minimum of forty (40) hours per calendar month.

1 Any month during which this minimum is not met shall toll the period of probation, i.e., the
2 period of probation shall be extended by one month for each month during which this minimum is
3 not met. During any such period of tolling of probation, Respondent must nonetheless comply
4 with all terms and conditions of probation.

5 Should Respondent, regardless of residency, for any reason (including vacation) cease
6 practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California,
7 Respondent must notify the Board in writing within ten (10) days of the cessation of practice, and
8 must further notify the Board in writing within ten (10) days of the resumption of practice. Any
9 failure to provide such notification(s) shall be considered a violation of probation.

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

13 "Cessation of practice" means any calendar month during which Respondent is not
14 practicing as a pharmacist for at least forty (40) hours, as defined by Business and
15 Professions Code section 4000 et seq. "Resumption of practice" means any calendar month
16 during which Respondent is practicing as a pharmacist for at least forty (40) hours as a
17 pharmacist as defined by Business and Professions Code section 4000 et seq.

18 13. Violation of Probation

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

24 If Respondent violates probation in any respect, the Board, after giving Respondent notice
25 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
26 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
27 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
28 a petition to revoke probation or an accusation is filed against Respondent during probation, the

1 Board shall have continuing jurisdiction and the period of probation shall be automatically
2 extended until the petition to revoke probation or accusation is heard and decided.

3 **14. Completion of Probation**

4 Upon written notice by the Board or its designee indicating successful completion of
5 probation, Respondent's license will be fully restored.

6 **15. Pharmacists Recovery Program (PRP)**

7 Within thirty (30) days of the effective date of this decision, Respondent shall contact the
8 Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll,
9 successfully participate in, and complete the treatment contract and any subsequent addendums as
10 recommended and provided by the PRP and as approved by the Board or its designee. The costs
11 for PRP participation shall be borne by the Respondent.

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

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

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

22 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a
23 licensed practitioner as part of a documented medical treatment shall result in the automatic
24 suspension of practice by Respondent and shall be considered a violation of probation.
25 Respondent may not resume the practice of pharmacy until notified by the Board in writing.

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

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

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

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

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

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

17 **16. Random Drug Screening**

18 Respondent, at his own expense, shall participate in random testing, including but not
19 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
20 screening program as directed by the Board or its designee. Respondent may be required to
21 participate in testing for the entire probation period and the frequency of testing will be
22 determined by the Board or its designee. At all times, Respondent shall fully cooperate with the
23 Board or its designee, and shall, when directed, submit to such tests and samples for the detection
24 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or
25 its designee may direct. Failure to timely submit to testing as directed shall be considered a
26 violation of probation. Upon request of the Board or its designee, Respondent shall provide
27 documentation from a licensed practitioner that the prescription for a detected drug was
28 legitimately issued and is a necessary part of the treatment of the Respondent. Failure to timely

1 provide such documentation shall be considered a violation of probation. Any confirmed positive
2 test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a
3 documented medical treatment shall be considered a violation of probation and shall result in the
4 automatic suspension of practice of pharmacy by Respondent. Respondent may not resume the
5 practice of pharmacy until notified by the Board in writing.

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

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

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

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

22 **17. Abstain from Drugs and Alcohol Use**

23 Respondent shall completely abstain from the possession or use of alcohol, controlled
24 substances, dangerous drugs and their associated paraphernalia except when the drugs are
25 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon
26 request of the Board or its designee, Respondent shall provide documentation from the licensed
27 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the
28 treatment of the Respondent. Failure to timely provide such documentation shall be considered a

1 violation of probation. Respondent shall ensure that he is not in the same physical location as
2 individuals who are using illicit substances even if Respondent is not personally ingesting the
3 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia
4 not supported by the documentation timely provided, and/or any physical proximity to persons
5 using illicit substances, shall be considered a violation of probation.

6 **18. Prescription Coordination and Monitoring of Prescription Use**

7 Within thirty (30) days of the effective date of this decision, Respondent shall submit to the
8 Board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
9 physician assistant, or psychiatrist of Respondent's choice, who shall be aware of the
10 Respondent's history with the use of controlled substances and dangerous drugs and who will
11 coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled
12 substances or mood-altering drugs. The approved practitioner shall be provided with a copy of
13 the Board's Statement of Issues and decision. A record of this notification must be provided to
14 the Board upon request. Respondent shall sign a release authorizing the practitioner to
15 communicate with the Board about Respondent's treatment(s). The coordinating physician, nurse
16 practitioner, physician assistant, or psychiatrist shall report to the Board on a quarterly basis for
17 the duration of probation regarding Respondent's compliance with this condition. If any
18 substances considered addictive have been prescribed, the report shall identify a program for the
19 time limited use of any such substances. The Board may require that the single coordinating
20 physician, nurse practitioner, physician assistant or psychiatrist be a specialist in addictive
21 medicine, or consult a specialist in addictive medicine. Should Respondent, for any reason, cease
22 supervision by the approved practitioner, Respondent shall notify the Board immediately and,
23 within thirty (30) days of ceasing treatment, submit the name of a replacement physician, nurse
24 practitioner, physician assistant, or psychiatrist of Respondent's choice to the Board or its
25 designee for its prior approval. Failure to timely submit the selected practitioner or replacement
26 practitioner to the Board for approval, or to ensure the required reporting thereby on the quarterly
27 reports, shall be considered a violation of probation.

28 If at any time an approved practitioner determines that Respondent is unable to practice

1 safely or independently as a pharmacist, the practitioner shall notify the Board immediately by
2 telephone and follow up by written letter within three (3) working days. Upon notification from
3 the Board or its designee of this determination, Respondent shall be automatically suspended and
4 shall not resume practice until notified by the Board that practice may be resumed.

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

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

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

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

21 **19. Supervised Practice**

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

27 Continuous – At least 75% of a work week

28 Substantial - At least 50% of a work week

1 Partial - At least 25% of a work week

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

3 Within thirty (30) days of the effective date of this decision, Respondent shall have his
4 supervisor submit notification to the Board in writing stating that the supervisor has read the
5 decision in case number 5460 and is familiar with the required level of supervision as determined
6 by the Board or its designee. It shall be the Respondent's responsibility to ensure that his
7 employer(s), pharmacist-in-charge and/or supervisor(s) submit timely acknowledgement(s) to the
8 Board. Failure to cause the direct supervisor and the pharmacist-in-charge to submit timely
9 acknowledgements to the Board shall be considered a violation of probation.

10 If Respondent changes employment, it shall be the Respondent's responsibility to ensure
11 that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely
12 acknowledgement(s) to the Board. Respondent shall have his new supervisor, within fifteen (15)
13 days after employment commences, submit notification to the Board in writing stating the direct
14 supervisor and pharmacist-in-charge have read the decision in case number 5460 and is familiar
15 with the level of supervision as determined by the Board. Respondent shall not practice
16 pharmacy and his license shall be automatically suspended until the Board or its designee
17 approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-charge to
18 submit timely acknowledgements to the board shall be considered a violation of probation.

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

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

28 During suspension, Respondent shall not engage in any activity that requires the

1 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
 2 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
 3 designated representative for any entity licensed by the Board.

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

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

8 **20. No Ownership of Licensed Premises**

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

16 **ACCEPTANCE**

17 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
 18 discussed it with my attorney, Paul Chan, Esq. I understand the stipulation and the effect it will
 19 have on my application for a pharmacist license. I enter into this Stipulated Settlement and
 20 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
 21 Decision and Order of the Board of Pharmacy.

22

23

24 DATED: 2/1/2016



 VICTOR LEE
 Respondent

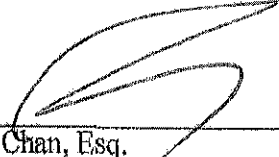
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I have read and fully discussed with Respondent Victor Lee the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

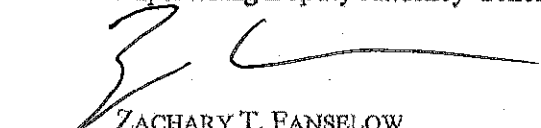
DATED: 2/3/16 
Paul Chan, Esq.
Attorney for Respondent

ENDORSEMENT

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

Dated: 2/5/16

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
MARC D. GREENBAUM
Supervising Deputy Attorney General


ZACHARY T. FANSELOW
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Statement of Issues No. 5460

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9 **STATE OF CALIFORNIA**

10 In the Matter of the Statement of Issues
11 Against:

Case No. 5460

12 **VICTOR LEE**

STATEMENT OF ISSUES

13 **Pharmacist License Applicant**

14 Respondent.
15

16 Complainant alleges:

17 **PARTIES**

18 1. Virginia Herold ("Complainant") brings this Statement of Issues solely in her official
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

20 2. On or about September 17, 1999, the Board of Pharmacy ("Board"), Department of
21 Consumer Affairs, issued Pharmacy Intern Permit No. INT 9492 to Victor Lee ("Respondent").

22 3. On or about April 16, 2003, the Board received an application for Pharmacist
23 Licensure Examination from Respondent. The Board denied the Application on June 6, 2003.

24 4. On or about November 10, 2003, the Board filed Accusation and Statement of Issues
25 No. 2664 against Respondent.

26 5. On or about February 13, 2004, the Board issued its Decision and Order in Case No.
27 2664, accepting Respondent's application for a pharmacist license, but immediately revoking that
28 license and placing it on probation for three years, with terms and conditions.

1 “(1) Been convicted of a crime. A conviction within the meaning of this section means a plea
2 or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is
3 permitted to take following the establishment of a conviction may be taken when the time for
4 appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order
5 granting probation is made suspending the imposition of sentence, irrespective of a subsequent
6 order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

7 “(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
8 benefit himself or herself or another, or substantially injure another.

9 “(3) (A) Done any act that if done by a licentiate of the business or profession in question,
10 would be grounds for suspension or revocation of license.

11 “(B) The board may deny a license pursuant to this subdivision only if the crime or act is
12 substantially related to the qualifications, functions, or duties of the business or profession for
13 which application is made.

14

15 “(c) Notwithstanding any other provisions of this code, a person shall not be denied a license
16 solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or
17 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to
18 Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.”

19 12. Section 4300, subdivision (c), states:

20 “The board may refuse a license to any applicant guilty of unprofessional conduct. The board
21 may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty
22 of unprofessional conduct and who has met all other requirements for licensure. The board may
23 issue the license subject to any terms or conditions not contrary to public policy, including, but not
24 limited to, the following:

25 “(1) Medical or psychiatric evaluation.

26 “(2) Continuing medical or psychiatric treatment.

27 “(3) Restriction of type or circumstances of practice.

28 “(4) Continuing participation in a board-approved rehabilitation program.

1 “(5) Abstention from the use of alcohol or drugs.

2 “(6) Random fluid testing for alcohol or drugs.

3 “(7) Compliance with laws and regulations governing the practice of pharmacy.”

4 13. Section 4301 states, in pertinent part:

5 “The board shall take action against any holder of a license who is guilty of unprofessional
6 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

7 Unprofessional conduct shall include, but is not limited to, any of the following:

8

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

14

15 “(j) The violation of any of the statutes of this state, of any other state, or of the United
16 States regulating controlled substances and dangerous drugs.

17

18 “(l) The conviction of a crime substantially related to the qualifications, functions, and duties
19 of a licensee under this chapter. The record of conviction of a violation of Chapter 13
20 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
21 substances or of a violation of the statutes of this state regulating controlled substances or
22 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
23 record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The
24 board may inquire into the circumstances surrounding the commission of the crime, in order to fix
25 the degree of discipline or, in the case of a conviction not involving controlled substances or
26 dangerous drugs, to determine if the conviction is of an offense substantially related to the
27 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a
28 conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of

1 this provision. The board may take action when the time for appeal has elapsed, or the judgment of
2 conviction has been affirmed on appeal or when an order granting probation is made suspending
3 the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal
4 Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
5 setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

6

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

11 14. Section 4060 states, in pertinent part:

12 “A person shall not possess any controlled substance, except that furnished to a person upon
13 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
14 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
15 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician
16 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
17 pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the
18 possession of any controlled substance by a manufacturer, wholesaler, third-party logistics
19 provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian,
20 naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, if in stock
21 in containers correctly labeled with the name and address of the supplier or producer.

22 “This section does not authorize a certified nurse-midwife, a nurse practitioner, a physician
23 assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.”

24 REGULATORY PROVISIONS

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

26 “For the purpose of denial, suspension, or revocation of a personal or facility license
27 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
28 crime or act shall be considered substantially related to the qualifications, functions or duties of a

1 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
2 licensee or registrant to perform the functions authorized by his license or registration in a manner
3 consistent with the public health, safety, or welfare.”

4 **CONTROLLED SUBSTANCES AND DANGEROUS DRUGS**

5 16. Xanax, a brand name for alprazolam, is an anti-anxiety benzodiazepine and a Schedule
6 IV controlled substance as designated by Health and Safety Code section 11057, subdivision
7 (d)(1), and is categorized as a dangerous drug pursuant to Business and Professions Code section
8 4022.

9 **FIRST CAUSE FOR DENIAL OF APPLICATION**

10 **(Conviction of a Substantially Related Crime)**

11 17. Respondent's application is subject to denial under section 4300, section 4301,
12 subdivision (l), and section 480, subdivision (a)(1), in conjunction with California Code of
13 Regulations, title 16, section 1770, in that Respondent was convicted of a crime substantially
14 related to the qualifications, functions, and duties of a pharmacist. The circumstances are as
15 follows:

16 a. On or about September 30, 2002, after pleading guilty, Respondent was convicted of a
17 misdemeanor for violating Health and Safety Code section 11377, subdivision (a) [possession of a
18 controlled substance], in the criminal proceeding entitled *The People of the State of California v.*
19 *Victor Lee* (Super. Ct. Los Angeles County, 2002, No. 2AL01291.)

20 b. On or about March 25, 2002, Respondent was arrested by the Monterey Park Police
21 Department following a traffic stop for a violation of Vehicle Code section 22350 (speeding).
22 During a consented search of Respondent's vehicle, the controlled substance Xanax was found.
23 Respondent then admitted to the arresting officer that he was in possession of the Xanax without a
24 prescription, that he occasionally used Xanax without a prescription, and that he “took two
25 Ecstasy pills on Friday afternoon.”

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SECOND CAUSE FOR DENIAL OF APPLICATION

(Possession of Controlled Substances and Dangerous Drugs)

18. Respondent's application is subject to denial under section 4300, section 4301, subdivision (j), and section 480, subdivision (a)(3), in conjunction with section 4060, on the grounds of unprofessional conduct, in that Respondent, by his own admission, was in possession of Xanax without a prescription and had recently taken Ecstasy, an illegal controlled substance. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 17 as though set forth fully.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Use of Controlled Substances and Dangerous Drugs)

19. Respondent's application is subject to denial under section 4300, section 4301, subdivision (h), and section 480, subdivision (a)(3), on the grounds of unprofessional conduct, in that Respondent, by his own admission, administered to himself the controlled substances and dangerous drugs Xanax and Ecstasy. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 17 as though set forth fully.

FOURTH CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct)

20. Respondent's application is subject to denial under section 4300, subdivision (c), in conjunction with section 4301 and section 480, subdivision (a)(3), on the grounds of unprofessional conduct, in that Respondent committed acts which led to discipline against his previously issued pharmacist license. The circumstances include that Respondent's previously issued Original Pharmacist License No. RPH 55289 was placed on probation for three years on February 13, 2004, in the Board's Decision and Order in Case No. 2664. That order is now final. Respondent subsequently surrendered his pharmacist license on October 23, 2008. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 17 through 19 as though set forth fully.

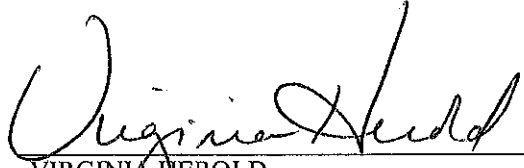
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PRAYER

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. Denying the application of Victor Lee for a Pharmacist License; and,
2. Taking such other and further action as deemed necessary and proper.

DATED: 9/11/15 

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

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