

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

In the Matter of the Statement of Issues
Against:

TRI MINH DUONG

Pharmacist Applicant

Case No. 5504

OAH No. 2015100095

Respondent.

DECISION AND ORDER

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

This Decision shall become effective on March 17, 2016.

It is so ORDERED on February 16, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President



California State Board of Pharmacy

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BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
DEPARTMENT OF CONSUMER AFFAIRS
GOVERNOR EDMUND G. BROWN JR.

February 16, 2016

Tri Minh Duong
9315 Bolsa Avenue #217
Westminister, CA 92683

Re: LETTER OF PUBLIC REPROVAL
In the Matter of the Statement of Issues Against:
Tri Minh Duong, Pharmacy Applicant

Dear Mr. Duong:

On September 21, 2015, the Board of Pharmacy, Department of Consumer Affairs, State of California, filed a Statement of Issues against your application for a Pharmacist license. The Statement of Issues alleged that in 2007 you engaged in conduct that, if done by a licensed pharmacist, would be grounds for disciplinary action pursuant to Business and Professions Code sections 4301 (general unprofessional conduct) and 4301 (f) (unprofessional conduct involving dishonesty, fraud or deceit) in that you unlawfully possessed and concealed an unloaded semi-automatic handgun in a public place.

Taking into consideration the age of the offense that occurred over eight years ago, your diligence in overcoming the hardship of being an emancipated minor while still in high school, your achievement of a long term goal to earn a PharmD degree and pursue a career as a Pharmacist, your licensure as a Pharmacist by the Texas Board of Pharmacy and subsequent work as a Staff Pharmacist and promotion to Pharmacy Manager at KMart in Texas without incident for over a year, your personal statements that demonstrate that you have learned from your prior misconduct and are committed to living a lawful life, letter of recommendation from your employment supervisor that demonstrate that your professional performance as a Pharmacist meets or exceeds all standards, and that there are other mitigating circumstances in this case that support the determination that you are safe to practice as a Pharmacist, the Board has decided that the charges warrant a public reproof.

Accordingly, in resolution of this matter under the authority provided under Business and Professions Code section 495, the Board of Pharmacy, Department of Consumer Affairs issues this letter of public reproof.

Sincerely,

VIRGINIA HEROLD

A handwritten signature in cursive script that reads "Virginia Herold".

Executive Officer
Board of Pharmacy
Department of Consumer Affairs

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 LORETTA A. WEST
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4 State Bar No. 149294
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Attorneys for Complainant

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

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

13 **TRI MINH DUONG**
14 **Pharmacist Applicant**

15
16 Respondent.

Case No. 5504

OAH No. 2015100095

**STIPULATED SETTLEMENT
AND DISCIPLINARY ORDER FOR
PUBLIC REPROVAL**

[Bus. & Prof. Code § 495]

17
18 In the interest of a prompt and speedy settlement of this matter, consistent with the public
19 interest and the responsibilities of the Board of Pharmacy of the Department of Consumer Affairs,
20 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order for Public
21 Reproval as the final disposition of the Statement of Issues No. 5504.

22 PARTIES

23 1. VIRGINIA HEROLD (Complainant) is the Executive Officer of the Board of
24 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
25 by Kamala D. Harris, Attorney General of the State of California, by Loretta A. West, Deputy
26 Attorney General.

27 ///

1 10. Respondent agrees that his application for a Pharmacist license is subject to denial
2 and he agrees to be bound by the Board's imposition of discipline as set for in the Disciplinary
3 Order below.

4 RESERVATION

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

9 CONTINGENCY

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

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

22 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
23 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
24 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
25 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
26 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
27 writing executed by an authorized representative of each of the parties.
28

1 15. In consideration of the foregoing admissions and stipulations, the parties agree that
2 the Board may, without further notice or formal proceeding, issue and enter the following
3 Disciplinary Order:


4 **DISCIPLINARY ORDER**

5 IT IS HEREBY ORDERED that the application of Respondent Tri Ming Duong
6 (Respondent) for licensure as a Pharmacist is hereby granted. Upon successful completion of the
7 licensure examinations and all other licensing requirements, a Pharmacist license shall be issued
8 to Respondent. Respondent's Pharmacist license shall, by way of public reproof from the
9 Board's Executive Officer, be publically reproofed. The letter shall be in the same form as the
10 letter attached as Exhibit B to this stipulation.

11 **ACCEPTANCE**

12 I have carefully read the Stipulated Settlement and Disciplinary Order for Public Reproof.
13 I understand the stipulation and the effect it will have on my Pharmacy Technician. I enter into
14 this Stipulated Settlement and Disciplinary Order for Public Reproof voluntarily, knowingly, and
15 intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

16 DATED: 10/27/2015



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18 TRI MINH DUONG
Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order for Public Repeval is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: *OCTOBER 29, 2015*

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General

Loretta A. West
LORETTA A. WEST
Deputy Attorney General
Attorneys for Complainant

SD2015801329
Stipulated Settlement to client with edits 10 27 15.docx

Exhibit A

Statement of Issues No. 5504

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 LORETTA A. WEST
Deputy Attorney General
4 State Bar No. 149294
600 West Broadway, Suite 1800
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

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

Case No. 5504

13 **TRI MINH DUONG**

STATEMENT OF ISSUES

14
15 **Pharmacist Applicant**

16 **Respondent.**

17
18 **Complainant alleges:**

19 **PARTIES**

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

22 2. On or about May 19, 2014, the Board of Pharmacy, Department of Consumer Affairs
23 received an application for a Pharmacist License from Tri Minh Duong (Respondent). On or
24 about March 4, 2014, Tri Minh Duong certified under penalty of perjury to the truthfulness of all
25 statements, answers, and representations in the application. The Board denied the application on
26 May 19, 2015.

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

4

5 7. Section 482 of the Code states:

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

8 (a) Considering the denial of a license by the board under Section 480; or

9 (b) Considering suspension or revocation of a license under Section 490.

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

12 8. Section 4300 of the Code states:

13 (a) Every license issued may be suspended or revoked.

14

15 (c) The board may refuse a license to any applicant guilty of
16 unprofessional conduct. The board may, in its sole discretion, issue a probationary
17 license to any applicant for a license who is guilty of unprofessional conduct and who
18 has met all other requirements for licensure. The board may issue the license subject
19 to any terms or conditions not contrary to public policy, including, but not limited to,
20 the following:

21 (1) Medical or psychiatric evaluation.

22 (2) Continuing medical or psychiatric treatment.

23 (3) Restriction of type or circumstances of practice.

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

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

26 (6) Random fluid testing for alcohol or drugs.

27 (7) Compliance with laws and regulations governing the practice of
28 pharmacy.

. . . .

9. Section 4301 of the Code states:

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

. . . .

(f) The commission of any act involving moral turpitude, dishonesty,
fraud, deceit, or corruption, whether the act is committed in the course of relations as
a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

10. Section 4203 of the Code states:

(b) Upon receipt of an application for a license and the applicable fee, the board shall make a thorough investigation to determine whether the applicant is qualified for the license being sought. The board shall also determine whether this article has been complied with, and shall investigate all matters directly related to the issuance of the license. . . . The board shall deny an application for a license if the applicant or the premises for which application for a license is being made do not qualify a license under this article.

REGULATIONS

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

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

FACTS

12. On or about January 3, 2007, Respondent's former boss at Baskin Robbins in Tustin California (hereinafter referred to as BR) called for police assistance because Respondent was inside the store and was waiting for him to arrive at the store. Respondent's former boss had recently terminated Respondent's employment. He became concerned about possible retribution by Respondent because after being terminated, Respondent made an unusually high number of telephone calls to his cell phone and requested a face-to-face meeting at BR to discuss Respondent's recent termination.

13. On or about January 3, 2007, an Orange County Police Department officer arrived at BR and observed Respondent inside the store casually talking to an employee. Upon contact with Respondent, the officer immediately noticed that Respondent appeared to be concealing a weapon under his shirt. Respondent admitted to the officer that he had a gun partially tucked under his pants' waistband and concealed under his shirt. The officer reached under Respondent's shirt and seized a blue steel 9 mm semi-automatic handgun with an empty ammunition magazine inserted into the gun. The officer later conducted a computer check on the handgun and determined that Respondent was not legally authorized to possess or conceal on his person the handgun.

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1 Respondent was arrested and taken into custody for unlawful possession of a concealed gun in a
2 public place.

3 14. On or about July 20, 2007, in a criminal proceeding entitled *People v. Tri Minh*
4 *Duong*, in Orange County Superior Court, Central District, Case No. 07CFO117FA, Respondent
5 was convicted, on his plea of guilty, of violating Penal Code section 12021, subdivision (s)
6 (Illegal Possession of Firearm), a felony. Pursuant to a plea agreement and upon Respondent's
7 completion of at least 18 months criminal probation with no new law violations and no probation
8 violations, the felony status of the crime was reduced to a misdemeanor status on or about
9 May 15, 2009. The Court set aside Respondent's guilty plea, entered Respondent's not-guilty
10 plea and dismissed all criminal charges in the matter on or about December 15, 2014, pursuant to
11 Penal Code section 1203.4. Respondent did disclose this prior conviction on his pending
12 application for licensure as a pharmacist.

13 **FIRST CAUSE FOR DENIAL OF APPLICATION**

14 **(Unprofessional Conduct – Acts Which Would be Grounds for Disciplinary Action
15 If Done by a Licensed Pharmacist)**

16 15. Respondent's application is subject to denial for unprofessional conduct under Code
17 section 480(a)(3)(A) in that on or about January 3, 2007, he engaged in conduct that, if done by a
18 licensed pharmacist, would be grounds for disciplinary action pursuant to Business and
19 Professions Code sections 4301 (general unprofessional conduct) and 4301 (f) (unprofessional
20 conduct involving dishonesty, fraud or deceit) in that he unlawfully possessed and concealed a
21 semi-automatic handgun in a public place, as described above in paragraphs 12 and 13 which are
22 incorporated herein by reference.

23 **SECOND CAUSE FOR DENIAL OF APPLICATION**

24 **(Unprofessional Conduct - Unlawful Possession and Concealment
25 of a Semi-Automatic Handgun on January 3, 2007)**

26 16. Respondent's application is subject to denial for unprofessional conduct under Code section
27 480(a)(2) in that on or about January 3, 2007, he did an act involving dishonesty, fraud or deceit
28 with the intent to substantially benefit himself or another, or substantially injure another in that he

1 unlawfully possessed and concealed a semi-automatic handgun in a public place, as described
2 above in paragraphs 12 and 13 which are incorporated herein by reference.

3 **DISCIPLINARY CONSIDERATIONS**

4 17. To determine whether a pharmacist license, if any, should be issued to Respondent
5 and whether probationary status or conditions, if any, should be imposed on said license based
6 upon the causes for denial alleged above, pursuant to California Code of Regulations, title 16,
7 section 1445, Complainant alleges:

8 a. In a prior disciplinary action entitled "*In the Matter of the Statement of Issues*
9 *Against Tri Minh Duong*," Case No. 3195, the Board of Pharmacy denied Respondent's
10 application for licensure as a pharmacy technician, effective October 8, 2009. The Board adopted
11 as its Decision in the matter the written proposed decision of Administrative Law Judge (ALJ)
12 Greer Knopf who presided over the administrative hearing on the matter on May 27, 2009. The
13 Decision denied Respondent's application for a pharmacy technician license based upon, but not
14 limited to, the following factual findings and legal conclusions.

15 b. Respondent's unlawful possession and concealment of a semi-automatic
16 handgun on January 3, 2007, described above in paragraphs 12 and 13, was a very serious public
17 offense involving a deadly weapon and was substantially related to the qualifications, functions,
18 and duties of a pharmacy technician. Further, Respondent did not present any evidence to
19 demonstrate that he had dealt with the emotional issues that may have caused him to engage in
20 such unlawful conduct.

21 c. It was not in the public interest to grant Respondent's application for a
22 pharmacy technician license. Respondent needed more time to establish a track record as a law
23 abiding citizen and Respondent should not yet be trusted with a pharmacy technician license.

24 **PRAYER**

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

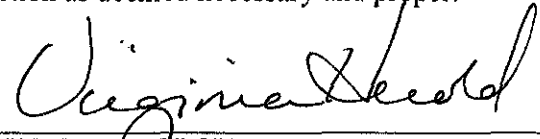
27 1. Denying the application of Tri Minh Duong for a Pharmacist License; and,

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

DATED: 9/21/15



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

SD2015801329

Exhibit B

Letter of Public Repeal in Case No. 5504

Date: _____

Tri Minh Duong
9315 Bolsa Avenue #217
Westminister, CA 92683

Re: LETTER OF PUBLIC REPROVAL
In the Matter of the Statement of Issues Against:
Tri Minh Duong, Pharmacy Applicant

Dear Mr. Duong:

On September 21, 2015, the Board of Pharmacy, Department of Consumer Affairs, State of California, filed a Statement of Issues against your application for a Pharmacist license. The Statement of Issues alleged that in 2007 you engaged in conduct that, if done by a licensed pharmacist, would be grounds for disciplinary action pursuant to Business and Professions Code sections 4301 (general unprofessional conduct) and 4301 (f) (unprofessional conduct involving dishonesty, fraud or deceit) in that you unlawfully possessed and concealed an unloaded semi-automatic handgun in a public place.

Taking into consideration the age of the offense that occurred over eight years ago, your diligence in overcoming the hardship of being an emancipated minor while still in high school, your achievement of a long term goal to earn a PharmD degree and pursue a career as a Pharmacist, your licensure as a Pharmacist by the Texas Board of Pharmacy and subsequent work as a Staff Pharmacist and promotion to Pharmacy Manager at KMart in Texas without incident for over a year, your personal statements that demonstrate that you have learned from your prior misconduct and are committed to living a lawful life, letter of recommendation from your employment supervisor that demonstrate that your professional performance as a Pharmacist meets or exceeds all standards, and that there are other mitigating circumstances in this case that support the determination that you are safe to practice as a Pharmacist, the Board has decided that the charges warrant a public reproof.

Accordingly, in resolution of this matter under the authority provided under Business and Professions Code section 495, the Board of Pharmacy, Department of Consumer Affairs issues this letter of public reproof.

Sincerely,

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs