

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

In the Matter of the Accusation
Against:

MINHTHU TRAN NGUYEN

Pharmacist License No. RPH 48195

Respondent.

Case No. 5803

OAH No. 2017051080

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge 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 September 6, 2017.

It is so ORDERED on August 7, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on June 15, 2017, in Oakland, California.

Complainant Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, was represented by Frank H. Pacoe, Supervising Deputy Attorney General.

Respondent Minhthu Tran Nguyen was present and represented herself.

This matter was submitted for decision on June 15, 2017.

FACTUAL FINDINGS

1. Complainant Virginia Herold made the accusation in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (board).
2. On August 14, 1995, the board issued Pharmacist License No. RPH 48195 to respondent Minhthu Tran Nguyen, also known as Samantha Nguyen. This registration was in full force and effect at all times relevant to the accusation, and will expire on August 31, 2017, unless renewed.
3. On February 18, 2016, respondent was convicted in the Superior Court of California, County of San Joaquin, pursuant to a plea of nolo contendere, of a misdemeanor violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content of 0.08 percent or higher), with a sentencing enhancement for having a blood alcohol

of 0.20 percent or higher. Imposition of sentence was suspended, and respondent was placed on probation for three years, on terms and conditions which included completing a nine-month first offenders' program, serving 17 days in jail through a work alternative program, and paying various fines and fees.

The facts and circumstances of the offense are that on October 30, 2015, respondent drove after consuming a large amount of soju. She was involved in a collision in which she hit a parked car. Respondent performed poorly on field sobriety tests. Respondent agreed to be tested with the breathalyzer, but after "blowing" once, she then refused to complete the test by "blowing" a second time. A search warrant was issued and a blood sample was taken at the hospital. Respondent's blood alcohol content was tested at 0.29 percent.

Discipline Consideration

4. On July 1, 2010, respondent was arrested by a Walnut Creek police officer who was responding to a report by a security guard of an intoxicated woman in the driver's seat of a parked car. Respondent admitted that she had been drinking alcohol. The officer suggested that respondent call a friend or arrange some other means to get home safely and she was uncooperative. Concerned that she would drive home, the officer arrested her as a danger to herself and others. During booking, respondent kicked the officer on the shin and was combative. Respondent was charged with public intoxication and assault on a police officer. The district attorney did not pursue the case and the charges were dropped.

The board learned of the arrest and on March 9, 2011, issued respondent a letter of admonishment.

5. Chi Keung Joseph Wong, an inspector for the board, testified at hearing. Wong explained that respondent's 2016 conviction and 2010 arrest raise concerns regarding her fitness to practice as a licensed pharmacist. He explained that pharmacists are expected to be honest and trustworthy, to possess good judgment, and to be accurate in handling patient data and in the dispensing of medications. Respondent's conduct surrounding the conviction and earlier arrest shed doubt on whether she possesses these characteristics. Wong added that respondent's excessive use of alcohol on these two occasions raises concerns about allowing her to have access to controlled substances while working as a pharmacist.

6. Respondent acknowledged the conduct described in Findings 3 and 4. She explained that she was undergoing three major stressful events in her life in October 2015, when she was arrested for driving under the influence: she had discovered a lump in her breast that shortly afterward was diagnosed as breast cancer; her father had just been hospitalized (and in fact died the following week); and her then-husband had gone on a vacation without her, signifying that her marriage was falling apart. She was having trouble coping with these stressful events and went out for sushi and soju.

Regarding the 2010 arrest, she admitted that she had too much to drink. She went to her car to "sleep it off" and was not intending to drive. Both incidents occurred at night after an evening of drinking.

7. Respondent is in compliance with the terms and conditions of probation. She has paid all fines and fees. She performed her jail service by working in a park. Respondent completed the nine-month first offenders' program, which met weekly. She found the classes helpful. She stated that she learned that "alcohol is not your friend, it doesn't solve your problems" and that "drinking and driving don't mix." She also learned about the triggers for drinking. Respondent stated that she only drank when she "went out" and that she has not been drinking for the past few months. Respondent has not attended Alcoholics Anonymous or any other alcohol rehabilitation program other than the court-ordered program. She does not believe she currently has a problem with alcohol, but stated that she previously relied on alcohol to alleviate her pain. She now knows that alcohol is not an effective solution. Respondent denied ever abusing drugs.

8. Respondent stated that she is trying to rely on people more to help her cope with stress. She was previously too embarrassed to confide in people. Now she is reaching out to others, including her cousin who is a psychiatrist. She has not confided in him about her conviction, but she has been opening up to him about her failed marriage.

9. Respondent also relies for support on her friend Matthew Dedmon, whom she met in the first offenders' program. Dedmon testified at the hearing. He met respondent last year in the first offenders' program, which he attended for three months after incurring a conviction for driving under the influence. Dedmon and respondent both felt ashamed and embarrassed and have been able to provide each other support. Dedmon described respondent as genuine, responsible, and passionate about her profession. She is keenly aware of the responsibilities of a pharmacist and the consequences of making a mistake. Dedmon added that respondent understands the severity of her conduct and has different outlets now for handling stress. He does not believe that she would jeopardize her career again by drinking and driving.

10. Respondent has worked as a pharmacist for Kaiser Permanente for 17 years. For the past 15 years, she has worked at a mail order facility in Livermore. Respondent dispenses medications and consults with patients over the telephone. In her most recent performance evaluation, in 2016, respondent was found to have met expectations in all areas, and to have exceeded expectations in quality and performance improvement. Respondent is proud of being an extremely careful pharmacist, and added that being a pharmacist is her career and her identity. She did not allow her alcohol use to influence her performance of her work. Respondent lives with her mother and her young nephew, whom she supports. Respondent wants very much to retain her license and is willing to abide by whatever conditions the board might impose.

11. Respondent's testimony was sincere and forthright.

12. In connection with the prosecution of this accusation, the Department of Justice has billed the Board \$5,130 for legal services. These charges are supported by a declaration that complies with the requirements of California Code of Regulations, title 1, section 1042. The prosecution costs sought are deemed to be reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 4301, subdivision (l), provides that the board may impose discipline on a pharmacist license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions, and duties of a pharmacist. Respondent's conviction for driving under the influence of alcohol is substantially related to the qualifications, functions, and duties of a pharmacist, as established in Findings 3 and 5.

2. Business and Professions Code section 4301, subdivision (h), provides that the board may impose discipline on a pharmacist license if the licensee uses alcoholic beverages to an extent or in a manner dangerous to herself, or any other person, or the public. The conduct underlying respondent's conviction involved the use of alcohol to an extent that was dangerous to respondent and others. Therefore, cause exists to suspend or revoke respondent's license in light of the matters set forth in Finding 3.

3. The board has established disciplinary guidelines for evaluating the appropriate penalty to impose on a licensee who is subject to discipline. The factors to be considered include actual or potential harm to pharmacy consumers or the public, prior disciplinary record, prior warnings, number of current violations, nature and severity of the acts under consideration, compliance with terms of probation, time that has passed since the acts, whether the conduct demonstrated incompetence, financial benefit from the misconduct, mitigating and aggravating evidence, and evidence of rehabilitation.

4. Respondent has been convicted of driving under the influence of alcohol and a blood alcohol test revealed a very high blood alcohol content. She remains on probation for the offense. Five years earlier she was arrested for public intoxication and assault on a police officer, resulting in a letter of admonishment from the board. These incidents are disturbing and raise questions about whether respondent has an alcohol problem and whether she is fit to continue practicing as a licensed pharmacist.

Respondent presented some evidence of rehabilitation. She is in compliance with the terms of her criminal probation. There is no evidence of misconduct arising directly from her work as a pharmacist. She appears to be a highly competent pharmacist whose services are valued by Kaiser Permanente. Respondent testified sincerely that she has modified her drinking habits and is seeking other outlets for managing stress.

Respondent has presented sufficient evidence of rehabilitation to warrant retaining her pharmacist license, on a probationary basis. Additional counseling to address her history of

alcohol abuse is necessary to provide assurance to the board and the public that she will not engage in further misconduct.

Under the board's disciplinary guidelines, violations of Business and Professions Code section 4301, subdivision (h) and subdivision (l) are "Category II" violations. The two causes for discipline in this action stem from the same underlying conduct and are more appropriately treated as one violation for purposes of interpreting the guidelines. The guidelines recommend a minimum three-year probation for "Category II" violations. Suspension in this matter is unwarranted. A three-year period of probation, with added conditions to address lingering concerns about respondent's rehabilitation from misuse of alcohol, will provide adequate protection to the public.

5. Business and Professions Code section 125.3 authorizes the Board to recover its reasonable costs of investigation and enforcement. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court sets forth standards by which a licensing board must exercise its discretion to reduce or eliminate costs awards to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. Considering these factors, there is no basis to reduce the costs in this matter.

ORDER

Pharmacist License No. RPH 48195, issued to respondent Minhthu Tran Nguyen, is revoked; however the revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

- a) an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- b) a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment

- c) a conviction of any crime
- d) discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacist license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

2. Report to the Board

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

3. Interview with the Board

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

4. Cooperate with Board Staff

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

5. Continuing Education

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

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 5803 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 5803, and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every entity licensed by the board of the terms and conditions of the decision in case number 5803 in advance of respondent commencing work at each licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he or she has read the decision in case number 5803 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

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

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

8. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of prosecution in the amount of \$5,130. Respondent shall be permitted to make monthly payments pursuant to a payment schedule agreed upon by the board.

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

The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to reimburse the board its costs of prosecution.

9. Probation Monitoring Costs

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

10. Status of License

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

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

11. License Surrender While on Probation/Suspension

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

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

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

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

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

13. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease practicing as a pharmacist for a minimum of 80 hours per calendar month in California, respondent must notify the board in writing within ten (10) days of the cessation of practice, and must further notify the board in writing within ten (10) days of the resumption of practice. Any failure to provide such notification(s) shall be considered a violation of probation.

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

"Cessation of practice" means any calendar month during which respondent is not practicing as a pharmacist for at least 80 hours, as defined by Business and Professions Code section 4000 et seq. "Resumption of practice" means any calendar month during which respondent is practicing as a pharmacist for at least 80 hours as a pharmacist as defined by Business and Professions Code section 4000 et seq.

14. Violation of Probation

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

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

15. Completion of Probation

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

16. Pharmacists Recovery Program (PRP)

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

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

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

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

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

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

During suspension, respondent shall not engage in any activity that requires the professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy. Respondent shall not perform

the duties of a pharmacy technician or a designated representative for any entity licensed by the board.

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

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

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

17. Random Drug Screening

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

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

ordering, manufacturing or dispensing of dangerous drugs and controlled substances. Respondent shall not resume practice until notified by the board.

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

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

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

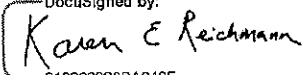
18. Abstain from Drugs and Alcohol Use

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

19. Criminal Probation/Parole Reports

Respondent shall provide a copy of the conditions of any criminal probation/parole to the board, in writing, within ten (10) days of the issuance or modification of those conditions. Respondent shall provide the name of her probation/parole officer to the board, in writing, within ten (10) days after that officer is designated or a replacement for that officer is designated. Respondent shall provide a copy of all criminal probation/parole reports to the board within ten (10) days after respondent receives a copy of such a report. Failure to timely make any of the submissions required hereby shall be considered a violation of probation.

DATED: June 28, 2017

DocuSigned by:

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KAREN REICHMANN
Administrative Law Judge
Office of Administrative Hearings

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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 Accusation Against:
11 **MINHTHU TRAN NGUYEN**
12 **1232 College Avenue**
13 **Alameda, CA 94501**
14 **Pharmacist License No. RPH 48195**
15 Respondent.

Case No. 5803

ACCUSATION

16 Complainant alleges:

17 **PARTIES**

- 18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
20 2. On or about August 14, 1995, the Board of Pharmacy issued Pharmacist License
21 Number RPH 48195 to Minhthu Tran Nguyen (Respondent). The Pharmacist License was in full
22 force and effect at all times relevant to the charges brought herein and will expire on August 31,
23 2017, unless renewed.
24

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.

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

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

8 5. Section 4300 of the Business and Professions Code, in pertinent part, states:

9 "(a) Every license issued may be suspended or revoked.
10 "(b) The board shall discipline the holder of any license issued by the board, whose default
11 has been entered or whose case has been heard by the board and found guilty, by any of the
12 following methods:

- 13 "(1) Suspending judgment.
- 14 "(2) Placing him or her upon probation.
- 15 "(3) Suspending his or her right to practice for a period not exceeding one year.
- 16 "(4) Revoking his or her license.
- 17 "(5) Taking any other action in relation to disciplining him or her as the board in its
18 discretion may deem proper.

19 . . .

20 6. Section 4301 of the Business and Professions Code, in pertinent part, states:

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

24 . . .

25 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
26 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
27 oneself, to a person holding a license under this chapter, or to any other person or to the public, or

28

1 to the extent that the use impairs the ability of the person to conduct with safety to the public the
2 practice authorized by the license.

3 . . .

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

21 . . .

22 7. Section 125.3 of the Business and Professions Code states, in pertinent part, that the
23 Board may request the administrative law judge to direct a licentiate found to have committed a
24 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
25 investigation and enforcement of the case.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct – Conviction of a Crime)

3 8. Respondent is subject to disciplinary action under Business and Professions Code
4 section 4301(l) for unprofessional conduct in that she was convicted of a crime substantially
5 related to the qualifications, functions, and duties of a licensee. The circumstances are as follows:

6 a. On or about February 18, 2016 in a criminal proceeding entitled *The People of the*
7 *State of California v. Minhthu Nguyen* in San Joaquin County Superior Court, Case No. CR-2015-
8 0014503, Respondent was convicted by her plea of nolo contendere for violating Vehicle Code
9 section 23152(b) – driving while having a blood alcohol level of 0.08 percent or higher with a .20
10 percent enhancement.

11 b. On or about October 30, 2015, at 2115 hours, police officers from the Stockton Police
12 Department were dispatched to assist with a DUI evaluation. The officer noticed that the driver
13 was involved in a collision. When the officer made contact with the driver he noticed that
14 Respondent had red watery eyes and the strong odor of an alcoholic beverage emanating from her
15 person. During questioning, Respondent admitted to driving home from a bar after drinking an
16 alcoholic beverage called soju. The officer then administered standard field sobriety tests to
17 Respondent which she performed poorly. Based on Respondent's poor performance on the field
18 sobriety tests, her objective signs of intoxication, her admission to drinking alcoholic beverages,
19 the officer advised Respondent she was under arrest for driving under the influence. The
20 Respondent refused a chemical test and thereafter a search warrant was issued and a blood sample
21 was taken from her at the County Hospital. Thereafter, Respondent was transported to the County
22 Jail and booked into custody. On November 16, 2015, a forensic alcohol analysis of
23 Respondent's blood sample reported her blood alcohol level was 0.29% at the time of the
24 incident.

25 c. On or about February 18, 2016, Respondent was placed on 3 years probation and
26 sentenced to serve 17 days in the county jail, ordered to obey all laws, ordered to enroll and
27 complete a 9 month First Offender Drinking Driver Program, and ordered to pay fines and fees.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - Self Administering Drugs/Alcohol)

3 9. Respondent is subject to disciplinary action under Business and Professions Code
4 section 4301(h) for unprofessional conduct in that on or about October 30, 2015 she used
5 alcoholic beverages, to an extent or in a manner dangerous or injurious to herself or, any other
6 person, or the public, as set forth in paragraph 8, above.

7 DISCIPLINE CONSIDERATIONS

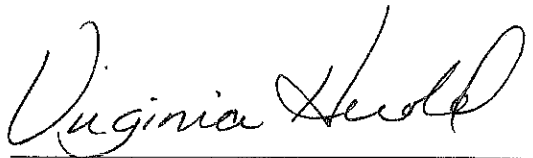
8 10. On June 6, 2010, the Respondent was arrested by officers of the Walnut Creek Police
9 Department for disorderly conduct (Penal Code sec. 647(f). The Board issued a letter of
10 admonishment on March 9, 2011 and closed the case.

11 PRAYER

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

- 14 1. Revoking or suspending Pharmacist License Number RPH 48195, issued to Minhthu
15 Tran Nguyen
- 16 2. Ordering Minhthu Tran Nguyen to pay the Board of Pharmacy the reasonable costs of
17 the investigation and enforcement of this case, pursuant to Business and Professions Code section
18 125.3;
- 19 3. Taking such other and further action as deemed necessary and proper.

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24 DATED: 2/13/17



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

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