

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

In the Matter of the Accusation Against:

**KEVIN XOB YANG
6617 Orr Street
San Diego, CA 92111**

**Pharmacy Technician Registration
No. TCH 98840**

Respondent.

Case No. 5882

DECISION AND ORDER

The attached Stipulated Surrender of License and 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 January 11, 2017.

It is so ORDERED on December 12, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

1 KAMALA D. HARRIS
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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 Accusation Against:

Case No. 5882

13 **KEVIN XOB YANG**
6617 Orr Street
14 San Diego, CA 92111

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 **Pharmacy Technician Registration**
16 **No. TCH 98840**

17 Respondent.

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

21 **PARTIES**

22 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
23 (Board). She brought this action solely in her official capacity and is represented in this matter by
24 Kamala D. Harris, Attorney General of the State of California, by Antoinette B. Cincotta,
25 Supervising Deputy Attorney General.

26 2. Kevin Xob Yang (Respondent) is representing himself in this proceeding and has
27 chosen not to exercise his right to be represented by counsel.

28 ///

1 **CONTINGENCY**

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

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

14 12. This Stipulated Surrender of License and 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 Surrender of License and Order
18 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
19 executed by an authorized representative of each of the parties.

20 13. 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 Order:

22 **ORDER**

23 IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 98840, issued
24 to Respondent Kevin Xob Yang, is surrendered and accepted by the Board of Pharmacy.

25 1. The surrender of Respondent's Pharmacy Technician Registration and the acceptance
26 of the surrendered license by the Board shall constitute the imposition of discipline against
27 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
28 Respondent's license history with the Board of Pharmacy.

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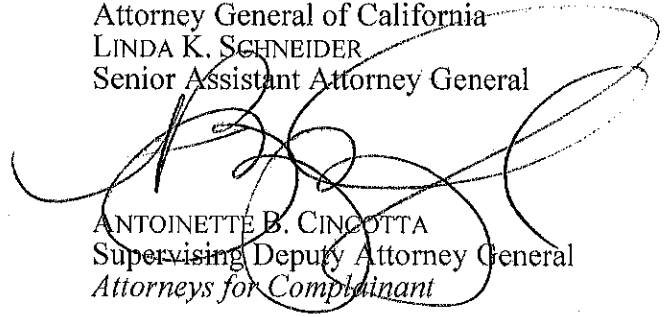
ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: 10/31/2016

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Senior Assistant Attorney General



ANTOINETTE B. CINCOTTA
Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 5882

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11
12 In the Matter of the Accusation Against: Case No. 5882
13 **KEVIN XOB YANG** ACCUSATION
14 **6617 Orr Street**
San Diego, CA 92111
15 **Pharmacy Technician Registration**
16 **No. TCH 98840**
17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.
23 2. On or about February 8, 2010, the Board issued Pharmacy Technician Registration
24 Number TCH 98840 to Kevin Xob Yang (Respondent). The Pharmacy Technician Registration
25 expired on May 31, 2015, and has not been renewed.

26 ///
27 ///
28 ///

1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code (Code) unless otherwise
4 indicated.

5 4. Section 4300, subdivision (a) of the Code states "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued license
9 by operation of law or by order or decision of the board or a court of law, the
10 placement of a license on a retired status, or the voluntary surrender of a license by a
11 licensee shall not deprive the board of jurisdiction to commence or proceed with any
12 investigation of, or action or disciplinary proceeding against, the licensee or to render
13 a decision suspending or revoking the license.

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states:

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

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

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

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

20 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
21 revoke a license on the ground that the licensee has been convicted of a crime substantially
22 related to the qualifications, functions, or duties of the business or profession for which the
23 license was issued.

24 8. Section 493 of the Code states:

25 Notwithstanding any other provision of law, in a proceeding conducted by a
26 board within the department pursuant to law to deny an application for a license or to
27 suspend or revoke a license or otherwise take disciplinary action against a person who
28 holds a license, upon the ground that the applicant or the licensee has been convicted
of a crime substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order

1 to fix the degree of discipline or to determine if the conviction is substantially related
2 to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 4301 of the Code states:

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

10 ...

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

14 ...

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

17 ...

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

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, subdivision (b) states:

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

- 1 (1) Nature and severity of the act(s) or offense(s).
- 2 (2) Total criminal record.
- 3 (3) The time that has elapsed since commission of the act(s) or offense(s).
- 4 (4) Whether the licensee has complied with all terms of parole, probation,
5 restitution or any other sanctions lawfully imposed against the licensee.
- 6 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

8 For the purpose of denial, suspension, or revocation of a personal or facility
9 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
10 Professions Code, a crime or act shall be considered substantially related to the
11 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.

12 **COSTS**

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

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(September 8, 2015 Criminal Conviction for Possession of Controlled Substance**
21 **Paraphernalia on August 11, 2013)**

22 13. Respondent has subjected his registration to discipline under sections 490 and 4301,
23 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
24 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

- 25 a. On or about September 8, 2015, in a criminal proceeding entitled *People of the*
26 *State of California v. Kenneth Xob Yang*, in Fresno County Superior Court, case number
27 M13928612, Respondent was convicted on his plea of guilty to violating Health and Safety Code
28 section 11364.1(a), possession of controlled substance paraphernalia, a misdemeanor.

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

DATED: 8/15/16

Virginia Herold

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

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SAN DIEGO
ATTORNEY GENERAL