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 Case No. 5882

Pharmacy Technician Registration No. TCH 98840

Respondent.

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

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By

Amy Gutierrez, Pharm.D. Board President

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10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
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12	In the Matter of the Accusation Against:	Case No. 5882	
13	KEVIN XOB YANG 6617 Orr Street	STIPULATED SURRENDER OF	
14	San Diego, CA 92111	LICENSE AND ORDER	
15	Pharmacy Technician Registration No. TCH 98840		
16	Respondent.		
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10	ΙΤΙς μερερί στιριμάτες ανίς ας		
20	IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-		
21	entitled proceedings that the following matters are true:		
22	PARTIES 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.	
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Stipulated Surrender of License (Case No. 5882)

3. On or about February 8, 2010, the Board issued Pharmacy Technician Registration No. TCH 98840 to Respondent. The Pharmacy Technician Registration expired on May 31, 2015, and has not been renewed. 3

JURISDICTION

4. Accusation No. 5882 was filed before the Board and is currently pending against 5 Respondent. The Accusation and all other statutorily required documents were properly served 6 $\overline{7}$ on Respondent on August 22, 2016. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 5882 is attached as Exhibit A and incorporated by 8 9 reference.

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ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in 11 Accusation No. 5882. Respondent also has carefully read, and understands the effects of this 12 Stipulated Surrender of License and Order. 13

6. Respondent is fully aware of his legal rights in this matter, including the right to a 14 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at 15 16 his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel 17 the attendance of witnesses and the production of documents; the right to reconsideration and 18 19 court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws. 20

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and 21 every right set forth above. 22

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CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation 24 No. 5882, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician 2.5Registration No. TCH 98840 for the Board's formal acceptance. 26

9. Respondent understands that by signing this stipulation he enables the Board to issue 27 an order accepting the surrender of his Pharmacy Technician Registration without further process. 28

CONTINGENCY

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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:		

ORDER

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

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

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2. Respondent shall lose all rights and privileges as a pharmacy technician in California 1 as of the effective date of the Board's Decision and Order. Respondent shall relinquish his pharmacy technician registration to the Board within ten (10) days of the effective date of this decision. 4

3. If Respondent ever files an application for licensure or a petition for reinstatement in 5 the State of California, the Board shall treat it as a new application for licensure. Respondent 6 7 may not apply for any license, permit, or registration from the Board for three (3) years from the effective date of this decision. 8

9 4. Respondent stipulates that should he apply for any license from the board on or after the effective date of this decision, all allegations set forth in Accusation No. 5882 shall be 10 deemed to be true, correct and admitted by Respondent when the board determines whether to 11 grant or deny the application. Respondent shall satisfy all requirements applicable to that license 12 as of the date the application is submitted to the Board, including, but not limited to certification 13 14 by a nationally recognized body prior to the issuance of a new license. Respondent is required to report this surrender as disciplinary action. 15

5. Respondent stipulates that should he apply for any license from the Board on or after 16 the effective date of this decision, investigation and prosecution costs in the amount of \$590.00 17 shall be paid to the board prior to issuance of the license. 18

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ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the 20stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this 21 22 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy. 23

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DATED:

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1	ENDORSEMENT			
2	The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted			
3	for consideration by the Board of Pharmacy of the Department of Consumer Affairs.			
4				
5	Dated: $10/3(2-0)$ Respectfully submitted,			
6	Kamala D. Harris			
7	Attorney General of California LINDA K. SCHNEIDER Senior Assistant Attorney General			
8	Senior Assistant Attorney General			
9	AAAA			
10	ANTOINETTÉ B. CINCOTTA Supervising Deputy Attorney General			
11	Attorneys for Completinant			
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Exhibit A

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Accusation No. 5882

1	Kamala D. Harris		
2	Attorney General of California LINDA K. SCHNEIDER		
3	Senior Assistant Attorney General ANTOINETTE B. CINCOTTA		
4	Supervising Deputy Attorney General State Bar No. 120482		
5	600 West Broadway, Suite 1800		
	P.O. Box 85266		
6	San Diego, CA 92186-5266 Telephone: (619) 738-9457		
7	Facsimile: (619) 645-2061 Attorneys for Complainant		
8		RETHE	
9	DEPARTMENT OF (PHARMACY CONSUMER AFFAIRS	
10	STATE OF O	CALIFORNIA	
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12	In the Matter of the Accusation Against:	Case No. 5882	
13	KEVIN XOB YANG 6617 Orr Street	ACCUSATION	
14	San Diego, CA 92111		
15	Pharmacy Technician Registration No. TCH 98840		
16 17	Respondent.		
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10	Complainant alleges:		
		TIES	
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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.		
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		(KEVIN XOB YANG) ACCUSATION	

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 9	The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any		
10 11	investigation of, or action or disciplinary proceeding against, the licensee or to render 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 the rehabilitation of a person when:		
15	(a) Considering the denial of a license by the board under Section 480; or		
16	(b) Considering suspension or revocation of a license under Section 490.		
17 18	Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.		
19	7. Section 490 of the Code provides, in pertinent part, that a board may suspend or		
20	revoke a license on the ground that the licensee has been convicted of a crime substantially		
21	related to the qualifications, functions, or duties of the business or profession for which the		
22	license was issued.		
23	8. Section 493 of the Code states:		
24	Notwithstanding any other provision of law, in a proceeding conducted by a		
25	board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who 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		
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27	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		
28	may inquire into the circumstances surrounding the commission of the crime in order		
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to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

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

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.

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

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

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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:

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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, restitution or any other sanctions lawfully imposed against the licensee.		
5	(5) Evidence, if any, of rehabilitation submitted by the licensee.		
6 7	11. California Code of Regulations, title 16, section 1770, states:		
8 9 10 11	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.		
12	COSTS	İ	
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 (1) 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 <i>People of the</i>		
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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1	b. As a result of the conviction, Respondent was granted probation for three years,		
2	and committed to sheriff's custody for 180 days, with pre-custody credit for 12 days. All but		
3	eight days in custody were stayed. Respondent was ordered to pay fees and fines, submit to a		
4	Fourth Amendment waiver, not associate with known drug users, and abstain from drug use.		
5	c. The facts that led to the conviction are that on or about August 11, 2013, the		
6	Clovis Police Department conducted a probation check at an apartment while Respondent was		
7	visiting the probationer. The officers asked if there was anything illegal in the apartment.		
8	Respondent advised that there was a glass methamphetamine smoking pipe in the living room		
9	that belonged to him. The officers located the smoking pipe containing white residue under the		
10	living room sofa. Respondent was cited for possessing narcotics paraphernalia.		
11	SECOND CAUSE FOR DISCIPLINE		
12	(Violation of California Statutes Regulating Controlled Substances)		
13	14. Respondent has subjected his license to discipline under section 4301, subdivision (j)		
14	of the Code for unprofessional conduct in that he violated a California statute regulating		
15	controlled substances as described in paragraph 13, above.		
16	THIRD CAUSE FOR DISCIPLINE		
17	(October 6, 2015 Criminal Conviction for Fraudulent Appropriation by an Employee		
18	& Grand Theft by Employee in August 2015)		
19	15. Respondent has subjected his registration to discipline under sections 490 and 4301,		
20	subdivision (1) of the Code in that he was convicted of crimes that are substantially related to the		
21	qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:		
22	a. On or about October 6, 2015, in a criminal proceeding entitled <i>People of the</i>		
23	State of California v. Kenneth Xob Yang, in San Diego County Superior Court, case number		
24	CD263388, Respondent was convicted on his plea of guilty to violating Penal Code section 508,		
25	fraudulent appropriation by an employee, and Penal Code section 487, subdivision (b)(3), grand		
26	theft by an employee, felonies. As to both counts, the court found true the allegation that in the		
27	commission of the crimes, the aggregate losses to the victims exceeded \$65,000 within the		
28	meaning of Penal Code section 12022.6, subdivision (b).		
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As a result of the convictions, on November 4, 2015, Respondent was b. 1 sentenced to serve the upper term of three years in the San Diego County Jail, with pre-custody 2 credit for 125 days, followed by 18 months of supervised probation. The term was ordered to be served concurrent with the term ordered in case number CE344879, below. Respondent was ordered to pay fees and fines, plus restitution to the victim.

- The facts that led to the convictions are that on or about August 12, 2015, the 6 c. 7 California Highway Patrol (CHP) was notified by a corporate investigator that a San Diego trucking company experienced a theft of 26 Specialized Bicycles where Respondent was 8 employed as a security guard. The trucking company had video surveillance that implicated 9 Respondent in the theft. During the course of the investigation, a warrant was obtained to search 10 Respondent's residence. In addition to six Specialized Bicycles, they found packing boxes 11 containing clothing pens, soap, laundry detergent, diapers, deodorant, books, stereo equipment, 12 tools, batteries, and other assorted items. All of the items were confirmed stolen from 13 Respondent's employer. Respondent admitted to the CHP officers that he was the only person 14 working security at the trucking company, and he would take a little each time he worked. He 15 stated he either sold or gave away 19 bicycles, and he also sold stolen items on Ebay. The 16 estimated value of the stolen items was \$101,079.00. 17
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FOURTH CAUSE FOR DISCIPLINE

(October 20, 2015 Criminal Conviction for

Fraudulent Appropriation by an Employee in July 2014)

16. Respondent has subjected his registration to discipline under sections 490 and 4301, 21 subdivision (1) of the Code in that he was convicted of a crime that is substantially related to the 22 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:/ 23 24 a. On or about October 20, 2015, in a criminal proceeding entitled *People of the* 25 State of California v. Kenneth Xob Yang, in San Diego County Superior Court, case number CE344879, Respondent was convicted on his plea of guilty to violating Penal Code section 508, 26 fraudulent appropriation by an employee, a felony. In exchange for the plea, the court dismissed 27 an additional felony count of grand theft (Pen. Code, § 487(a)). 28

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b. As a result of the conviction, on November 4, 2015, Respondent was sentenced
 to serve 16 months in jail, with pre-custody credit for 108 days. Respondent was ordered to pay
 fees and fines, plus restitution to the victim.

The facts that led to the conviction are that on or about July 22, 2014, an area c. 4 supervisor of a gas station chain in El Caion contacted the California State Lottery's (CSL) Law 5 Enforcement Division reporting that an employee (Respondent) had stolen lottery Scratchers 6 during his working hours. Using the information provided, a CSL investigator was able to 7 document that 145 Scratchers had been stolen and cashed at eight retailers, including the victim 8 gas station, collecting a total of \$1,986 in prize money. The investigator obtained video and still 9 photos of surveillance footage taken at various retailers depicting Respondent cashing the 10 Scratchers. Respondent's work timecard for the period July 2, 2014 to July 14, 2014, coincided 11 with dates the Scratchers were cashed. The area supervisor contacted the El Cajon Police 12 Department, Respondent admitted responsibility for the loss, but never paid restitution to his 13 employer, as promised. 14

FIFTH CAUSE FOR DISCIPLINE

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(Commission of Acts Involving Moral Turpitude, Dishonesty, Fraud or Deceit)

17. Respondent has subjected his registration to discipline under section 4301, subdivisions (a) and (f) of the Code for unprofessional conduct in that his conduct, as described in paragraphs 15 and 16 above, involved moral turpitude, dishonesty, fraud and/or deceit.

PRAYER

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, 22 and that following the hearing, the Board of Pharmacy issue a decision:

Revoking or suspending Pharmacy Technician Registration Number TCH 98840,
 issued to Kevin Xob Yang;

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

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1	3. Ta	king such other and further a	action as deemed necessary and proper.
2		8/15/16	Dugina Heedd
3 ·	DATED:		
. 4			VIRGINIA HEROLD Executive Officer
5			Board of Pharmacy Department of Consumer Affairs State of California
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			(KEVIN XOB YANG) ACCUSATION