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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. 5471

13 **VIET DU LE**  
12592 Josephine Street, Unit E  
14 Garden Grove, CA 92841

**A C C U S A T I O N**

15 **Intern Pharmacist Registration No. INT 31273**

16 Respondent.  
17

18 Complainant alleges:

19 **PARTIES**

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

22 2. On April 11, 2013, the Board of Pharmacy issued Intern Pharmacist Registration  
23 Number INT 31273 to Viet Du Le (Respondent). The Intern Pharmacist Registration expired on  
24 May 31, 2015, and has not been renewed.

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. Section 4300, subdivision (a), of the Code provides that every license issued by the  
2 Board may be suspended or revoked.

3 5. Section 4300.1 of the Code states:

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

### 8 STATUTORY PROVISIONS

9 6. Section 482 of the Code states:

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

- 12 (a) Considering the denial of a license by the board under Section 480; or  
13 (b) Considering suspension or revocation of a license under Section 490.

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

16 7. Section 490 of the Code states:

17 (a) In addition to any other action that a board is permitted to take against  
18 a licensee, a board may suspend or revoke a license on the ground that the  
19 licensee has been convicted of a crime, if the crime is substantially related to the  
20 qualifications, functions, or duties of the business or profession for which the  
21 license was issued.

22 (b) Notwithstanding any other provision of law, a board may exercise any  
23 authority to discipline a licensee for conviction of a crime that is independent of  
24 the authority granted under subdivision (a) only if the crime is substantially  
25 related to the qualifications, functions, or duties of the business or profession for  
26 which the licensee's license was issued.

27 (c) A conviction within the meaning of this section means a plea or verdict  
28 of guilty or a conviction following a plea of nolo contendere. An action that a  
board is permitted to take following the establishment of a conviction may be  
taken 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.

(d) The Legislature hereby finds and declares that the application of this  
section has been made unclear by the holding in *Petropoulos v. Department of  
Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has

1 placed a significant number of statutes and regulations in question, resulting in  
2 potential harm to the consumers of California from licensees who have been  
3 convicted of crimes. Therefore, the Legislature finds and declares that this section  
4 establishes an independent basis for a board to impose discipline upon a licensee,  
5 and that the amendments to this section made by Chapter 33 of the Statutes of  
6 2008 do not constitute a change to, but rather are declaratory of, existing law.

7  
8 8. Section 4301 of the Code states:

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

13 . . . .

14 (h) The administering to oneself, of any controlled substance, or the use of  
15 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
16 dangerous or injurious to oneself, to a person holding a license under this chapter,  
17 or to any other person or to the public, or to the extent that the use impairs the  
18 ability of the person to conduct with safety to the public the practice authorized by  
19 the license.

20 . . . .

21 (k) The conviction of more than one misdemeanor or any felony involving  
22 the use, consumption, or self-administration of any dangerous drug or alcoholic  
23 beverage, or any combination of those substances.

24 (l) The conviction of a crime substantially related to the qualifications,  
25 functions, and duties of a licensee under this chapter. The record of conviction of  
26 a violation of Chapter 13 (commencing with section 801) of Title 21 of the United  
27 States Code regulating controlled substances or of a violation of the statutes of  
28 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 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.

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1 **REGULATORY PROVISIONS**

2 9. California Code of Regulations, title 16, section 1769, states:

3 . . . .

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

8 (1) Nature and severity of the act(s) or offense(s).

9 (2) Total criminal record.

10 (3) The time that has elapsed since commission of the act(s) or  
11 offense(s).

12 (4) Whether the licensee has complied with all terms of parole,  
13 probation, restitution or any other sanctions lawfully imposed against the licensee.

14 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

23 **COST RECOVERY**

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

**FIRST CAUSE FOR DISCIPLINE**

**(July 26, 2013 Conviction for Driving Under the Influence of Alcohol on May 11, 2013)**

12. Respondent has subjected his Intern Pharmacist Registration to discipline under  
Code sections 490 and 4301, subdivision (l), in that he was convicted of a crime that is

1 substantially related to the qualifications, functions, and duties of a registered intern pharmacist.

2 The circumstances are as follows:

3 a. On July 26, 2013, in a criminal proceeding entitled *The People of the State*  
4 *of Illinois v. Viet Du Le*, in Cook County Circuit Court, First Municipal District, Traffic Division  
5 Case Number 37805469, Respondent was convicted of violating Illinois Compiled Statutes  
6 (ILCS), 625ILCS5 (Illinois Vehicle Code), chapter 11(Rules of the Road), article V (Driving  
7 While Intoxicated, Transporting Alcoholic Liquor, and Reckless Driving), section 501 (Driving  
8 while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds  
9 or any combination thereof), subdivision (a)(2), a person shall not drive or be in actual physical  
10 control of any vehicle within this State while under the influence of alcohol (DUI)[625 ILCS  
11 5/11-501(a)(2)], a class A misdemeanor. Respondent was also charged with violation of 625  
12 ILCS 5/11-502-A, possession of alcoholic liquor in open container while driving a vehicle upon  
13 a highway; 625 ILCS 5/11-1301, stopping, standing or parking outside of business or residence  
14 district; and 625 ILCS 5/12-603.1, failure to use safety belts, all petty offenses.

15 b. As a result of the conviction, on July 26, 2013, Respondent was sentenced  
16 to 12 months court supervision under standard, alcohol, DUI related, and special conditions.  
17 Respondent was ordered to pay all fines, costs, fees, assessments, reimbursements, and  
18 restitution. Respondent was also ordered to attend a Victim Impact Panel session and perform 40  
19 hours of independent community service.

20 c. The facts that led to the conviction are that on May 11, 2013, Respondent  
21 stopped in the center lane and fell asleep while driving a vehicle on interstate I-55 in Chicago,  
22 Illinois, resulting in a crash of two vehicles. A responding officer from the Illinois State Police  
23 found Respondent still in the driver's seat of one of the vehicles. The officer opened the driver's  
24 door and noticed a large laceration over Respondent's left eye. As Respondent talked, the officer  
25 smelled alcohol coming from Respondent's breath and observed his slurred speech and  
26 bloodshot eyes. The officer saw a half-full pint bottle of Wild Turkey brand whiskey on the  
27 passenger seat floorboard. Due to his injuries, Respondent was taken to the MacNeal Hospital

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1 where he submitted to a preliminary breath test, which indicated a blood alcohol concentration  
2 (BAC) of .209 percent.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(July 21, 2014 Conviction for Driving Under the Influence of Alcohol on May 26, 2014)**

5 13. Respondent has subjected his Intern Pharmacist Registration to discipline under  
6 Code sections 490 and 4301, subdivision (l), in that he was convicted of a crime that is  
7 substantially related to the qualifications, functions, and duties of a registered intern pharmacist.  
8 The circumstances are as follows:

9 a. On July 21, 2014, in a criminal proceeding entitled *The People of the*  
10 *State of Illinois v. Viet Du Le*, in Will County Circuit Court, Twelfth Judicial Circuit, Will  
11 County Courthouse Case Number 14TR45415-6, Respondent was convicted on his plea of guilty  
12 of violating 625 ILCS 5/11-501(a)(2), DUI, a class A misdemeanor. Respondent was also  
13 charged with violation of 625 ILCS 5/11-501(a)(1), driving while having a BAC of .08 percent  
14 or more; 625 ILCS 5/11-606, exceeding the regulation speed of 40 miles per hour; and 625 ILCS  
15 5/11-709(a), improper lane usage.

16 b. As a result of the conviction, on July 21, 2014, Respondent was sentenced  
17 to 24 months conditional discharge and ordered to pay fines, fees, and costs. Respondent was  
18 also ordered to attend a Victim Impact Panel session, complete 25 counseling and aftercare  
19 sessions, and perform 240 hours of community service.

20 c. The facts that led to the conviction are that on May 26, 2014, Respondent  
21 illegally parked his car on the left shoulder on southbound lane 1 on interstate I-355 in Homer,  
22 Illinois. A dispatched officer from the Illinois State Police located the vehicle parked earlier  
23 being driven southbound on I-355. The officer followed the vehicle and observed it crossing the  
24 left lane twice onto the left shoulder, and slowing down to 40 miles per hour. The officer  
25 initiated an enforcement stop and Respondent complied. While talking to Respondent, the officer  
26 noticed Respondent's slow response, slurred speech, and glassy bloodshot eyes. Respondent's  
27 breath emitted a strong odor of alcohol. Respondent admitted to drinking one or two beers and  
28 agreed to take a series of field sobriety tests, which he failed to perform as explained and

1 demonstrated. Respondent submitted to a preliminary breath test, which indicated a BAC of .166  
2 percent. Thereafter, Respondent was transported to Toll Plaza 99 squad room for processing  
3 where he provided a breath sample, which tested .157 percent BAC.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct - Dangerous Use of Alcohol)**

6 14. Respondent has subjected his Intern Pharmacist Registration to discipline under  
7 Code section 4301, subdivision (h) in that on May 11, 2013, and May 26, 2014, he used alcohol  
8 to the extent and in a manner that was dangerous and injurious to himself and to the public, as  
9 described in paragraphs 12 and 13, above, which are incorporated by reference.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct - Conviction of Alcohol Related Misdemeanors)**

12 15. Respondent has subjected his Intern Pharmacist Registration to discipline under  
13 Code section 4301, subdivision (k) in that on July 26, 2013, and July 21, 2014, he was convicted  
14 of more than one misdemeanor involving the use or consumption of alcohol, as described in  
15 paragraphs 12 and 13, above, which are incorporated by reference.

16 **PRAYER**

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

19 1. Revoking or suspending Intern Pharmacist Registration Number INT 31273,  
20 issued to Viet Du Le;

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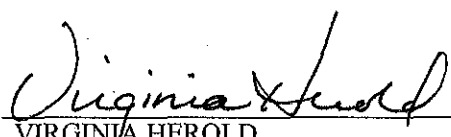
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2. Ordering Viet Du Le to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: 9/5/15



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

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