

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 JAMES M. LEDAKIS
Supervising Deputy Attorney General
4 State Bar No. 132645
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2105
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Statement of Issues Against:

Case No. 5472

13 **VIET DU LE**

STATEMENT OF ISSUES

14 **Pharmacist License Applicant**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

22 2. On June 25, 2014, the Board of Pharmacy, Department of Consumer Affairs
23 received an application for a Pharmacist License from Viet Du Le (Respondent). On or about
24 June 20, 2014, Viet Du Le certified under penalty of perjury to the truthfulness of all statements,
25 answers, and representations in the application. The Board denied the application on March 1,
26 2015.

27 ///

28 ///

1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Board of Pharmacy (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code (Code) unless otherwise indicated.

5 4. Section 4300, subdivision (c) of the Code states:

6 The board may refuse a license to any applicant guilty of unprofessional conduct.

7 **STATUTORY PROVISIONS**

8 5. Section 475 of the Code states:

9 (a) Notwithstanding any other provisions of this code, the provisions
10 of this division shall govern the denial of licenses on the grounds of:

11 (1) Knowingly making a false statement of material fact, or
12 knowingly omitting to state a material fact, in an application for a license.

13 (2) Conviction of a crime.

14 (3) Commission of any act involving dishonesty, fraud or deceit
15 with the intent to substantially benefit himself or another, or substantially injure
16 another.

17 (4) Commission of any act which, if done by a licentiate of the
18 business or profession in question, would be grounds for suspension or revocation
19 of license.

20

21 6. Section 480 of the Code states:

22 (a) A board may deny a license regulated by this code on the grounds
23 that the applicant has one of the following:

24 (1) Been convicted of a crime. A conviction within the meaning of
25 this section means a plea or verdict of guilty or a conviction following a plea of
26 *nolo contendere*. Any action that a board is permitted to take following the
27 establishment of a conviction may be taken when the time for appeal has elapsed,
28 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 the provisions of section 1203.4 of the Penal Code.

.....

(3) (A) Done any act that if done by a licentiate of the business or
profession in question, would be grounds for suspension or revocation of license.

.....

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7. Section 482 of the Code states:

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

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

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

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a 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 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 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:

....

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

....

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

(l) 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

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

17

18 REGULATORY PROVISIONS

19 10. California Code of Regulations, title 16, section 1769 states:

20 (a) When considering the denial of a facility or personal license under
21 section 480 of the Business and Professions Code, the board, in evaluating the
22 rehabilitation of the applicant and his present eligibility for licensing or
23 registration, will consider the following criteria:

24 (1) The nature and severity of the act(s) or offense(s) under
25 consideration as grounds for denial.

26 (2) Evidence of any act(s) committed subsequent to the act(s) or
27 crime(s) under consideration as grounds for denial under section 480 of the
28 Business and Professions Code.

(3) The time that has elapsed since commission of the act(s) or
crime(s) referred to in subdivision (1) or (2).

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

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

. . . .

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

For the purpose of denial, suspension, or revocation of a personal or
facility license pursuant to Division 1.5 (commencing with section 475) of the
Business and Professions Code, a crime or act shall be considered substantially
related to the qualifications, functions or duties of a licensee or registrant if to a

1 substantial degree it evidences present or potential unfitness of a licensee or
2 registrant to perform the functions authorized by his license or registration in a
3 manner consistent with the public health, safety, or welfare.

4 **FIRST CAUSE FOR DENIAL OF APPLICATION**

5 **(July 26, 2013 Conviction for Driving with a BAC of .08 % or More on May 11, 2013)**

6 12. Respondent's application for Pharmacist Examination and Licensure is subject to
7 denial under Code section 480, subdivisions (a)(1) and (a)(3)(A) in that he was convicted of a
8 crime that is substantially related to the qualifications, duties, and functions of a licensed
9 pharmacist, which would also be a ground for discipline for a licensed pharmacist under Code
10 section 4301, subdivision (l). The circumstances are as follows:

11 a. On July 26, 2013, in a criminal proceeding entitled *The People of the State*
12 *of Illinois v. Viet Du Le*, in Cook County Circuit Court, First Municipal District, Traffic Division
13 Case Number 37805469, Respondent was convicted of violating Illinois Compiled Statutes
14 (ILCS), 625ILCS5 (Illinois Vehicle Code), chapter 11(Rules of the Road), article V (Driving
15 While Intoxicated, Transporting Alcoholic Liquor, and Reckless Driving), section 501 (Driving
16 while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds
17 or any combination thereof), subdivision (a)(2), a person shall not drive or be in actual physical
18 control of any vehicle within this State while under the influence of alcohol (DUI)[625 ILCS
19 5/11-501(a)(2)], a class A misdemeanor. Respondent was also charged with violation of 625
20 ILCS 5/11-502-A, possession of alcoholic liquor in open container while driving a vehicle upon
21 a highway; 625 ILCS 5/11-1301, stopping, standing or parking outside of business or residence
22 district; and 625 ILCS 5/12-603.1, failure to use safety belts, all petty offenses.

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

28 ///

1 c. The facts that led to the conviction are that on May 11, 2013, Respondent
2 stopped in the center lane and fell asleep while driving a vehicle on interstate I-55 in Chicago,
3 Illinois, resulting in a crash of two vehicles. A responding officer from the Illinois State Police
4 found Respondent still in the driver's seat of one of the vehicles. The officer opened the driver's
5 door and noticed a large laceration over Respondent's left eye. As Respondent talked, the officer
6 smelled alcohol coming from Respondent's breath and observed his slurred speech and
7 bloodshot eyes. The officer also saw a half-full pint bottle of Wild Turkey brand whiskey on the
8 passenger seat floorboard. Due to his injuries, Respondent was taken to the MacNeal Hospital
9 where he submitted to a preliminary breath test, which indicated a blood alcohol concentration
10 (BAC) of .209 percent.

11 SECOND CAUSE FOR DENIAL OF APPLICATION

12 **(July 21, 2014 Conviction for Driving with a BAC of .08 % or More on May 26, 2014)**

13 13. Respondent's application for Pharmacist Examination and Licensure is
14 subject to denial under Code section 480, subdivisions (a)(1) and (a)(3)(A) in that he was
15 convicted of a crime that is substantially related to the qualifications, duties, and functions of a
16 licensed pharmacist, which would also be a ground for discipline for a licensed pharmacist under
17 Code section 4301, subdivision (I). The circumstances are as follows:

18 a. On July 21, 2014, in a criminal proceeding entitled *The People of the State of*
19 *Illinois v. Viet Du Le*, in Will County Circuit Court, Twelfth Judicial Circuit, Will County
20 Courthouse Case Number 14TR45415-6, Respondent was convicted on his plea of guilty of
21 violating 625 ILCS 5/11-501(a)(2), DUI, a class A misdemeanor. Respondent was also charged
22 with violation of 625 ILCS 5/11-501(a)(1), driving while having a BAC of .08 percent or more;
23 625 ILCS 5/11-606, exceeding the regulation speed of 40 miles per hour; and 625 ILCS 5/11-
24 709(a), improper lane usage.

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

1 c. The facts that led to the conviction are that on May 26, 2014, Respondent
2 illegally parked his car on the left shoulder on southbound lane 1 on interstate I-355 in Homer,
3 Illinois. A dispatched officer from the Illinois State Police located the vehicle parked earlier
4 being driven southbound on I-355. The officer followed the vehicle and observed it crossing the
5 left lane twice onto the left shoulder, and slowing down to 40 miles per hour. The officer
6 initiated an enforcement stop and Respondent complied. While talking to Respondent, the officer
7 noticed Respondent's slow response, slurred speech, and glassy bloodshot eyes. Respondent's
8 breath emitted a strong odor of alcohol. Respondent admitted to drinking one or two beers and
9 agreed to take a series of field sobriety tests, which he failed to perform as explained and
10 demonstrated. Respondent submitted to a preliminary breath test, which indicated a BAC of .166
11 percent. Thereafter, Respondent was transported to Toll Plaza 99 squad room for processing
12 where Respondent provided a breath sample, which tested .157 percent BAC.

13 **THIRD CAUSE FOR DENIAL OF APPLICATION**

14 **(Act If Done By Licentiate – Dangerous Use of Alcohol)**

15 14. Respondent's application for Pharmacist Examination and Licensure is subject to
16 denial under Code section 480, subdivision (a)(3)(A) in that on May 11, 2013, and May 26,
17 2014, he used alcohol to the extent and in a manner that was dangerous and injurious to himself
18 and to the public, which would also be a ground for discipline for a licensed pharmacist under
19 Code section 4301, subdivision (h) in that the extent of the use impaired the ability of the
20 licensed person to conduct with safety to the public the practice authorized by the license.

21 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

22 **(Act If Done By Licentiate – Convictions of Alcohol Related Misdemeanors)**

23 15. Respondent's application for Pharmacist Examination and Licensure is subject to
24 denial under Code section 480, subdivision (a)(3)(A) in that on July 26, 2013, and July 21, 2014,
25 he was convicted of more than one misdemeanor involving the use or consumption of alcohol,
26 which would also be a ground for discipline for a licensed pharmacist under Code section 4301,
27 subdivision (k), as described in paragraphs 12 and 13, above, which are incorporated by
28 reference.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

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

1. Denying the application of Viet Du Le for a Pharmacist License; and
2. Taking such other and further action as deemed necessary and proper.

DATED: _____

9/5/15

Virginia Herold

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

SD2015801057
81099829.doc