

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

In the Matter of the Petition to Revoke
Probation Against:

Case No. 3986

OAH No. 2013070102

CHU HUU VU
3883 Indian Way
San Diego, CA 92117

Pharmacist License No. RPH 39728

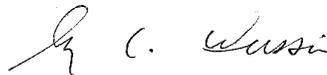
Respondent.

ORDER DENYING RECONSIDERATION

The Board of Pharmacy having read and considered respondent's petition for reconsideration of the board's decision effective April 7, 2014. NOW THEREFORE IT IS ORDERED that the petition for reconsideration is denied. The Board of Pharmacy's Decision and Order effective April 7, 2014 is the Board of Pharmacy's final decision in this matter.

Date: April 4, 2014

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

**BEFORE THE
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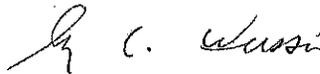
DECISION AND ORDER

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 on April 7, 2014.

It is so ORDERED on March 6, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke
Probation Against:

CHU HUU VU,

Pharmacist License No. RPH 39728

Respondent.

Case No. 3986

OAH No. 2013070102

PROPOSED DECISION

Beth Faber Jacobs, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on January 7, 2014.

Antoinette B. Cincotta, Deputy Attorney General, Department of Justice, State of California, represented Complainant, Virginia Herold, Executive Officer of the Board of Pharmacy.

Respondent Chu Huu Vu appeared on his own behalf and was present throughout the proceeding.

The matter was submitted on January 7, 2014.

FACTUAL FINDINGS

Background and License History

1. On August 7, 1986, the California Board of Pharmacy (the board) issued Chu Huu Vu (respondent) pharmacist license number RPH 39728.
2. On January 19, 2000, the board filed Accusation No. 2236-B against respondent. The accusation alleged that, in 1998, respondent was convicted of aiding and abetting mail fraud in connection with a scheme to falsify claims to Medi-Cal through a pharmacy where respondent was the pharmacist-in-charge. Based on a stipulation between

respondent and the board, the board revoked respondent's pharmacist license, effective March 6, 2001.

3. Respondent served two years in prison and then successfully completed three years of supervised release. On July 15, 2004, respondent requested that the board reinstate his license. By Decision dated December 28, 2004, his request was denied.

4. On December 12, 2006, at age 75, respondent again filed a petition for reinstatement of his revoked license. A hearing was held on the petition. At that point, respondent had last practiced as a pharmacist in 1998. By Decision issued May 31, 2007, and effective June 6, 2007, the board concluded that respondent had demonstrated sufficient rehabilitation to be reinstated. It granted his petition for reinstatement, revoked his newly reinstated license, and placed his license on probation for five years with numerous terms and conditions of probation.

5. One of the terms and conditions of probation, Condition 12, required respondent to maintain employment as a pharmacist for a minimum of 80 hours per month. Under this provision, failing to practice for a period of thirty days was a period of "non-practice," and any period of non-practice would toll the length of the probation term. Under Probation Condition 12, "[i]t is a violation of probation for [respondent's] probation to remain tolled . . . for a period exceeding three years."

6. Condition 15, another term and condition of probation, required that respondent take and pass the California Pharmacy Jurisprudence Examination (CPJE). It stated in part:

[Respondent] shall take and pass the California Pharmacy Jurisprudence Examination (CPJE) as scheduled by the board after the effective date of this decision at [respondent's] own expense. If [respondent] fails to take and pass the examination within six months after the effective [date] of this decision, [respondent] shall be suspended from practice on written notice.

[Respondent] shall not resume the practice of pharmacy until he or she takes and passes the CPJE at a subsequent examination and is notified, in writing, that he or she has passed the examination.

During suspension, [respondent] shall not enter any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer, any other distributor of drugs, any manufacturer, or any place where dangerous drugs and devices or controlled substances are maintained. During suspension, [respondent] shall not practice pharmacy or do any act involving drug selection, selection of stock, manufacturing, compounding,

dispensing, or patient consultation. . . . During suspension, [respondent] shall not engage in any activity that requires the professional judgment of a pharmacist. . . .

During suspension, [respondent] shall not perform the duties of a pharmacy technician or an exemptee for any entity licensed by the board. . . .

Failure to take and pass the examination within one year of the effective date of this decision shall be considered a violation of probation. Suspension and probation shall be extended until [respondent] passes the examination and is notified in writing.

7. Under probation Condition 13, the board “may revoke probation and carry out the disciplinary order that was stayed” if respondent violated probation in any respect. In addition, it states that when a petition to revoke probation is filed, the board has continuing jurisdiction and probation is extended until the petition to revoke probation is decided.

Respondent and the CPJE Test

8. Although Condition 15 required respondent to take and pass the CPJE examination by December 6, 2007 (within six months of the effective date of his reinstatement), respondent did not take the test by December 6, 2007. Nor did he take it by 2009.

9. On August 28, 2009, the board invoked the provisions of Condition 15 and suspended respondent’s license to practice as a pharmacist because he failed to take and pass the required examination. The board sent respondent a Notice of Suspension and advised him that he was in violation of probation for failing to have taken and passed the examination; his license was suspended; and he could not resume practice as a pharmacist until he had been notified by the board in writing.

10. On September 9, 2009, respondent met with board representatives at the board’s office to discuss the terms and conditions of his probation that went into effect when he was reinstated in 2007.¹ He signed a document confirming that those terms and conditions had been “fully explained” to him by the board representatives. The document also stated that he “thoroughly understand[s] these terms and conditions as set forth in the disciplinary action and that failure to comply may result in further disciplinary action.” Board representatives emphasized the requirement that respondent take and pass the CPJE examination. Respondent asked the representative to direct him to where he could take the test.

¹ No evidence was offered to indicate whether any board representative personally met with respondent about the terms and conditions of probation prior to his suspension in August 2009.

11. By letter dated September 14, 2009, Tina Thomas, an enforcement analyst with the board, provided respondent with links on the Internet that he could use to access the application to take the CPJE examination. She invited him to contact her if he had any questions.

12. Respondent still did not take the examination.

13. Respondent has a medical condition requiring frequent trips to the restroom.

14. By correspondence dated April 16, 2010, the board sent respondent an information sheet about scheduling the CPJE examination. One of the paragraphs addressed the board's recognition of its obligation to provide reasonable accommodation to candidates with disabilities or medical conditions. It explained that a candidate seeking an accommodation for the examination "has the responsibility to make the request and provide sufficient documentation of the need for the accommodation 90 days prior to" the examination. The board's reasonable accommodation policy is also on its website, although there was no evidence to indicate when the policy was first posted there.

15. Respondent registered for the April 2011 CPJE examination. He did not request reasonable accommodation prior to (or even on the date of) the examination.

16. The CPJE examination was held on April 15, 2011. All examinees were fingerprinted prior to commencement of the examination. Respondent started the test, but he left the testing room shortly thereafter because he needed to use the restroom. When he returned from the restroom, he was required to be fingerprinted again. For some reason, the proctors concluded that respondent's fingerprints had changed. Despite his pleas, the proctors would not allow respondent back in the examination room. Respondent failed the exam.

17. Several months later, respondent contacted the testing company about taking the examination again. Respondent did not recall what he was told by the testing company. He never contacted the board, which would have sent him a required reauthorization to take the test. He never took the exam again, and he never passed it.

18. Respondent's license has remained suspended since August 29, 2009. His license expired on January 31, 2013.

Respondent's Testimony

19. Respondent is 82 years old. He came to the United States from his native country of Vietnam. Respondent has an adult daughter who is a pharmacist in Vietnam. According to respondent, he feels he is too old to take and pass the examination, but his former patients, clients, and his family would like him to become licensed again. Before he dies, respondent wants to be licensed again. As he explained during the hearing, he wants to keep his license so he can regain the prestige and respect previously given to him as a

licensee. He does not intend to dispense drugs and pharmaceuticals, but he would like to be a consultant, to “make people happy and explain how they should enjoy life.”

LEGAL CONCLUSIONS

1. When a licensee is on probation and the agency has filed a petition to revoke probation, the burden of proof is on the agency. The standard of proof required to establish the allegations in the petition is “preponderance of evidence.” (*Sandarg v. Dental Board of California* (2010) 184 Cal.App.4th 1434, 1441.)

2. Business and Professions Code section 4300, subdivision (a), provides that “[e]very license may be suspended or revoked.”

3. Under Business and Professions Code section 118, the suspension, expiration, surrender, or cancellation of a license does not deprive the board of jurisdiction to proceed with disciplinary action during the period when the license may be renewed, restored, reissued, or reinstated.

Cause Exists to Revoke Probation

4. When respondent’s license was reinstated in 2007, the board revoked his license, but stayed the revocation and placed him on probation with numerous terms and conditions to protect the public. Because respondent had not practiced as a pharmacist since 1998, one of the terms and conditions of probation required that he take and pass an examination about pharmacy laws to ensure he was competent and safe to be a licensed pharmacist. The terms of Condition 15 were clear – if he did not take and pass the CPJE examination within six months, his license would be suspended; if he did not take and pass the examination within one year, he would be in violation of probation.

5. Following his reinstatement, respondent took the CPJE examination once. Although he could have requested a reasonable accommodation to meet his medical need to frequently use the restroom, he did not do so. On April 15, 2011, he started the exam. He left the testing area shortly thereafter to use the restroom. When he returned, he was not permitted back in the examination room. Several months later, respondent asked the testing company to let him take the examination again, but he never contacted the board, which would have sent him reauthorization to take the test. He never took the examination again, and he never passed it. His failure to do so is a violation of probation.

6. The board gave respondent significant leeway in completing the CPJE examination. Although Condition 15 authorized the board to suspend his license if the test was not taken and passed by December 2007, the board did not suspend his license until almost two years after the effective date of his reinstatement. In 2009, after his license was suspended, representatives met with respondent to make sure he understood all the terms and conditions of probation and remind him about the importance of taking and passing the test.

Even after his unsuccessful attempt to pass the examination in April 2011, the board waited over two years before filing its petition to revoke probation. In the several years that followed respondent's reinstatement in 2007, he never complied with Condition 15 – he never took and passed the CPJE examination.

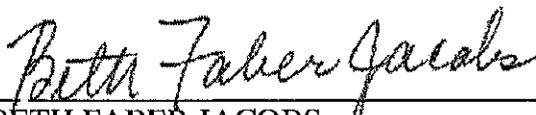
7. In addition to violating Condition 15, respondent's four-year suspension also put him in violation of Condition 12. Condition 12 required that respondent actually engage in the practice of pharmacy and emphasized that a failure to practice for three years was a separate violation of probation.

8. The primary purpose of the board's licensing and regulatory authority is to protect the public. Whenever protection of the public is inconsistent with other interests sought to be promoted, "the protection of the public shall be paramount." (Bus. & Prof. Code, § 4001.1.) The board is obligated to ensure that an individual holding a pharmacy license is authorized and qualified to hold the license. Respondent's heartfelt desire to retain his license and regain the prestige and respect that comes with being a licensee is understandable but does not take priority over public protection. Respondent has not taken the steps necessary to retain his license. He had several years to take and pass the CPJE examination. Respondent's license has remained in a suspended status for four years as the board waited for respondent to satisfy this important requirement. It is not in the public's interest to require the board to wait indefinitely. In light of the totality of the evidence, the only appropriate measure of discipline is to set aside the stay of the revocation that was issued when respondent was reinstated in 2007 and to revoke respondent's pharmacist license.

ORDER

The June 6, 2007, stay of the revocation of Chu Huu Vu's pharmacist license number RPH 39728 is vacated. Chu Huu Vu's pharmacist license is hereby revoked.

DATED: February 5, 2014


BETH FABER JACOBS
Administrative Law Judge
Office of Administrative Hearings

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Attorneys for Complainant
8

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

13 In the Matter of the Petition to Revoke
Probation Against:

Case No. 3986

14 **CHU HUU VU**
3883 Indian Way
15 San Diego, CA 92117

PETITION TO REVOKE PROBATION

16 **Pharmacist License No. RPH 39728**

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Petition to Revoke Probation solely in her
22 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
23 Affairs.

24 2. On or about August 7, 1986, the Board of Pharmacy issued Pharmacist License
25 Number RPH 39728 to Chu Huu Vu (Respondent). The Pharmacist License was suspended on
26 August 27, 2009, and will expire on January 31, 2013, unless otherwise renewed.

27 3. In a prior disciplinary action entitled *In the Matter of the Petition for Reinstatement of*
28 *Certificate to Practice Pharmacy of Chu Huu Vu*, Board of Pharmacy Case No. 2236-B, Office of

1 Administrative Hearings (OAH) No. N2007040268, the Board of Pharmacy issued a decision,
2 effective June 6, 2007, in which Respondent's Pharmacist License was reinstated and then
3 immediately revoked. However, the revocation was stayed and Respondent's Pharmacist License
4 was placed on probation for a period of five years with certain terms and conditions. A copy of
5 that decision is attached as Exhibit A and is incorporated herein by reference.

6 4. In a prior disciplinary action entitled *In the Matter of Accusation Against Chu Huu*
7 *Vu,*" Board of Pharmacy Case No. 2236-B, OAH No. L-2000050335, the Board of Pharmacy
8 issued a decision, effective March 6, 2001, in which Respondent's Pharmacist License was
9 revoked. A copy of that decision is attached as Exhibit B and is incorporated herein by reference.

10 JURISDICTION

11 5. This Petition to Revoke Probation is brought before the Board of Pharmacy (Board),
12 Department of Consumer Affairs, under the authority of the following laws. All section
13 references are to the Business and Professions Code (Code) unless otherwise indicated.

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

16 7. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
17 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
18 disciplinary action during the period within which the license may be renewed, restored, reissued
19 or reinstated.

20 FIRST CAUSE TO REVOKE PROBATION

21 (Maintain Employment as a Pharmacist)

22 8. At all times after the effective date of Respondent's probation, Condition 12 stated:

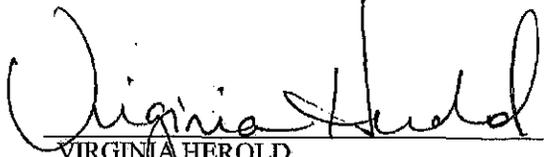
23 Should petitioner, regardless of residency, for any reason cease practicing
24 pharmacy for a minimum of 80 hours per calendar month in California, petitioner
25 must notify the board in writing within 10 days of cessation of the practice of
26 pharmacy or the resumption of the practice of pharmacy. Such periods of time shall
27 not apply to the reduction of the probation period. It is a violation of probation for
28 petitioner's probation to remain tolled pursuant to the provisions of this condition for
a period exceeding three years. "Cessation of practice" means any period of time
exceeding 30 days in which petitioner is not engaged in the practice of pharmacy as
defined in Section 4052 of the business and Professions Code for at least 80 hours a
calendar month.

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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. Revoking the probation that was granted by the Board of Pharmacy in Case No. 2236-B, Office of Administrative Hearings No. N2007040268, and imposing the disciplinary order that was stayed thereby revoking Pharmacist License No. RPH 39728 issued to Chu Huu Vu;
2. Revoking or suspending Pharmacist License No. RPH 39728, issued to Chu Huu Vu;
3. Taking such other and further action as deemed necessary and proper.

DATED: 6/2/11 

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

SD2011800061
80400761.doc

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

In the Matter of the Petition to Revoke
Probation Against:

Case No. 3986

CHU HUU VU
3883 Indian Way
San Diego, CA 92117

Pharmacist License No. RPH 39728

Respondent.

ORDER VACATING DEFAULT DECISION

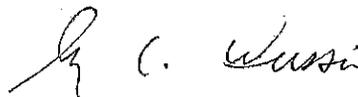
On or about February 28, 2013, pursuant to Government Code section 11520, subdivision (a), a Default Decision and Order revoking the pharmacist license held by Chu Huu Vu was entered by the Board.

On or about March 7, 2013, a timely motion to set aside the default decision pursuant to Government Code section 11520, subdivision (c) was received from Respondent. A quorum of the Board having considered that motion, it is hereby ORDERED that:

- (1) the default Decision and Order is vacated; and
- (2) this matter is remanded to the Attorney General's Office for further proceedings.

IT IS SO ORDERD this 21st day of March 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY WEISSER
Board President

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

In the Matter of the Petition to Revoke
Probation Against:
CHU HUU VU
3883 Indian Way
San Diego, CA 92117
Pharmacist License No. RPH 39728

Respondent.

Case No. 3986
OAH No. 2012010371
DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 2, 2011, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed Petition to Revoke Probation No. 3986 against Chu Huu Vu (Respondent) before the Board. (Petition to Revoke Probation attached as Exhibit A.)
2. On or about August 7, 1986, the Board issued Pharmacist License No. RPH 39728 to Respondent. The Pharmacist License expired on January 31, 2013, and has not been renewed.
3. On or about June 7, 2011, Respondent was served by Certified and First Class Mail copies of the Petition to Revoke Probation No. 3986, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,

1 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and
2 Professions Code section 4100, is required to be reported and maintained with the Board.
3 Respondent's address of record was and is: 3883 Indian Way, San Diego, CA 92117.

4 4. Service of the Petition to Revoke Probation was effective as a matter of law under the
5 provisions of Government Code section 11505, subdivision (c) and/or Business & Professions
6 Code section 124.

7 5. On or about June 11, 2011, Respondent signed and returned a Notice of Defense,
8 requesting a hearing in this matter. A Notice of Hearing was served by mail at Respondent's
9 address of record and it informed him that an administrative hearing in this matter was scheduled
10 for January 22, 2013. Respondent failed to appear at that hearing.

11 6. Government Code section 11506 states, in pertinent part:

12 (c) The respondent shall be entitled to a hearing on the merits if the respondent
13 files a notice of defense, and the notice shall be deemed a specific denial of all parts
14 of the accusation not expressly admitted. Failure to file a notice of defense shall
15 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
16 may nevertheless grant a hearing.

17 7. California Government Code section 11520 states, in pertinent part:

18 (a) If the respondent either fails to file a notice of defense or to appear at the
19 hearing, the agency may take action based upon the respondent's express admissions
20 or upon other evidence and affidavits may be used as evidence without any notice to
21 respondent.

22 8. Pursuant to its authority under Government Code section 11520, the Board finds
23 Respondent is in default. The Board will take action without further hearing and, based on the
24 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
25 taking official notice of all the investigatory reports, exhibits and statements contained therein on
26 file at the Board's offices regarding the allegations contained in Petition to Revoke Probation No.
27 3986, finds that the charges and allegations in Petition to Revoke Probation No. 3986, are
28 separately and severally, found to be true and correct by clear and convincing evidence.

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DETERMINATION OF ISSUES

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1. Based on the foregoing findings of fact, Respondent Chu Huu Vu has subjected his Pharmacist License No. RPH 39728 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist License based upon the following violations alleged in the Petition to Revoke Probation which are supported by the evidence contained in the Default Decision Evidence Packet in this case:

a. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 12, in that as a result of the suspension of his pharmacist license for failing to take and pass the California Pharmacy Jurisprudence Examination (CPJE), Respondent has not practiced pharmacy during his probation term; and

b. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 15, in that Respondent failed to take and pass the California Pharmacy Jurisprudence Examination within one year of the effective date of the decision.

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ORDER

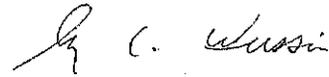
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2 IT IS SO ORDERED that Pharmacist License No. RPH 39728 issued to Respondent Chu
3 Huu Vu is revoked.

4 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
5 written motion requesting that the Decision be vacated and stating the grounds relied on within
6 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
7 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

8 This Decision shall become effective on April 1, 2013.

9 It is so ORDERED ON February 28, 2013.

10 BOARD OF PHARMACY
11 DEPARTMENT OF CONSUMER AFFAIRS
12 STATE OF CALIFORNIA

13 

14 By _____
15 STANLEY C. WEISSER
16 Board President

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19 70678263.DOC
20 DOJ Matter ID:SD2011800061

21 Attachment:
22 Exhibit A: Petition to Revoke Probation
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Exhibit A

Petition to Revoke Probation

1 KAMALA D. HARRIS
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2 LINDA K. SCHNEIDER
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Attorneys for Complainant

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

13 In the Matter of the Petition to Revoke Probation Against: 14 CHU HUU VU 3883 Indian Way 15 San Diego, CA 92117 16 Pharmacist License No. RPH 39728 17 Respondent.	Case No. 3986 PETITION TO REVOKE PROBATION
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18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Petition to Revoke Probation solely in her
22 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
23 Affairs.
- 24 2. On or about August 7, 1986, the Board of Pharmacy issued Pharmacist License
25 Number RPH 39728 to Chu Huu Vu (Respondent). The Pharmacist License was suspended on
26 August 27, 2009, and will expire on January 31, 2013, unless otherwise renewed.
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8 issued a decision, effective March 6, 2001, in which Respondent's Pharmacist License was
9 revoked. A copy of that decision is attached as Exhibit B and is incorporated herein by reference.

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18 disciplinary action during the period within which the license may be renewed, restored, reissued
19 or reinstated.

20 **FIRST CAUSE TO REVOKE PROBATION**

21 **(Maintain Employment as a Pharmacist)**

22 8. At all times after the effective date of Respondent's probation, Condition 12 stated:

23 Should petitioner, regardless of residency, for any reason cease practicing
24 pharmacy for a minimum of 80 hours per calendar month in California, petitioner
25 must notify the board in writing within 10 days of cessation of the practice of
26 pharmacy or the resumption of the practice of pharmacy. Such periods of time shall
27 not apply to the reduction of the probation period. It is a violation of probation for
28 petitioner's probation to remain tolled pursuant to the provisions of this condition for
a period exceeding three years. "Cessation of practice" means any period of time
exceeding 30 days in which petitioner is not engaged in the practice of pharmacy as
defined in Section 4052 of the business and Professions Code for at least 80 hours a
calendar month.

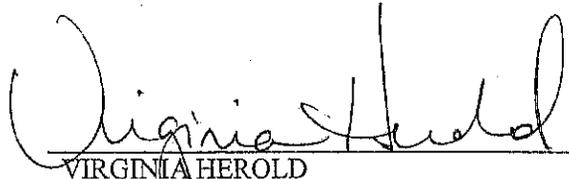
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PRAYER

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. Revoking the probation that was granted by the Board of Pharmacy in Case No. 2236-B, Office of Administrative Hearings No. N2007040268, and imposing the disciplinary order that was stayed thereby revoking Pharmacist License No. RPH 39728 issued to Chu Huu Vu;
2. Revoking or suspending Pharmacist License No. RPH 39728, issued to Chu Huu Vu;
3. Taking such other and further action as deemed necessary and proper.

DATED: 6/2/11



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

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Exhibit A

Decision and Order

In the Matter of Accusation Against Chu Huu Vu

Board of Pharmacy Case No. 2236-B

BEFORE THE
CALIFORNIA STATE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

In the Matter of the Petition for Reinstatement of
Certificate to Practice Pharmacy of:

CHU HUU VU
Oroville, California

Pharmacist License No. RPH 39728

Petitioner.

Case No. 2236-B

OAH No. N2007040268

DECISION

This matter was heard before the California State Board of Pharmacy on April 19, 2007, in Sacramento, California. Board members present and participating in the hearing were: William Powers, President; Dr. Kenneth H. Schell, Vice President; Dr. Ruth M. Conroy; D. Timothy Dazé; Stanley W. Goldenberg; Robert Graul; Dr. Clarence K. Hiura; Henry A. Hough; Dr. Susan L. Ravnan; and Dr. Robert E. Swart. Robert Walker, Administrative Law Judge, State of California, Office of Administrative Hearings, presided.

Joshua A. Room, Deputy Attorney General, appeared pursuant to Government Code section 11522.

The petitioner, Chu Huu Vu, appeared in propria persona.

The matter was submitted on April 19, 2007.

ISSUE

Should petitioner's certificate to practice pharmacy be reinstated?

CHU HUU VU
APR 19 2007

APPROVED FOR THE BOARD OF PHARMACY
STATE OF CALIFORNIA

FACTUAL FINDINGS

BACKGROUND

1. On August 7, 1986, the State Board of Pharmacy issued pharmacist license number RPH 39728 to the petitioner, Chu Huu Vu.

2. In January of 1998, petitioner was convicted of a violation of 18 United States Code section 1341.2, aiding and abetting mail fraud. The conviction was on a plea of guilty. The court sentenced petitioner to 24 months in prison and three years of supervised release. The court also assessed a penalty of \$150.

3. Petitioner's conviction resulted from incidents that occurred between January of 1991 and November of 1993. Petitioner was the pharmacist-in-charge of the Ulric Pharmacy in San Diego. The owner of the pharmacy, petitioner, and others conspired to submit fraudulent claims to Medi-Cal, and Medi-Cal paid more than \$160,000 on those claims.

4. Petitioner contends that, in fact, he did not participate in the conspiracy and did not engage in any crime. He says he became suspicious that the owner of the pharmacy was engaging in fraud and told the owner that he did not want to work there any longer. Petitioner, nevertheless, continued to work at Ulric Pharmacy and, along with the owner, was charged with mail fraud. Petitioner said he pled guilty on the advice of his attorney but now feels that the attorney gave him poor advice. Petitioner says the owner of the pharmacy had retained the attorney, and petitioner questions whether the attorney had petitioner's interest at heart. Petitioner, of course, cannot collaterally attack the conviction. He stands convicted.

5. By an accusation dated January 19, 2000, Patricia F. Harris, Executive Officer of the Board of Pharmacy, alleged the federal conviction and sought discipline against petitioner's license.

6. Petitioner and the board entered into a stipulation pursuant to which petitioner admitted the allegations in the accusation and the board revoked his license. As a further stipulation, the parties agreed that, as a condition precedent to any petition for reinstatement of petitioner's license, he was required to pay the board \$8,000 in cost recovery. The stipulated settlement and disciplinary order became effective on March 6, 2001.

7. Petitioner served the two years in prison, and, on February 2, 2003, he successfully completed his three years of supervised release.

8. This is petitioner's second petition to the board requesting reinstatement of his license. His first petition was dated July 15, 2004. By a decision dated December 28, 2004, the board denied that petition.

9. Petitioner's current petition for reinstatement is dated December 12, 2006. The hearing in the present matter is on that petition.

10. On December 23, 2006, petitioner paid the \$8,000 in cost recovery.

PROFESSIONAL DEVELOPMENT

11. Petitioner is 75 years old. His most recent employment as a pharmacist was in 1998.

12. Petitioner has satisfied the board's continuing education requirements.

13. In 2006 petitioner completed 43 hours of board approved continuing education.

14. Petitioner testified that, in addition to satisfying continuing education requirements, he subscribes to and studies a number of pharmacy journals.

REHABILITATION

15. Because petitioner insists he actually was not guilty of the crime to which he pled, he does not offer extensive evidence of rehabilitation. While he may not collaterally attack the conviction, it is not inappropriate for him to offer this explanation of the paucity of his evidence of rehabilitation.

16. There is evidence, however, that petitioner has made substantial progress toward rehabilitation. He completed his prison term and supervised release. It has been nine years since petitioner's conviction and 14 years since the incidents that gave rise to the conviction. It has been more than four years since he completed his period of supervised release. And there is no evidence of petitioner's having engaged in any other wrongdoing. Petitioner is married and has a young daughter. From his testimony, it appears that he has a stable family relationship. Petitioner and his family live on his wife's modest income, but he, nevertheless, paid the board's cost recovery.

LETTERS OF RECOMMENDATION

17. Viet Thue Truong, Pharm. D., is a licensed pharmacist in California. Dr. Truong wrote a letter with a note added to it indicating that it was written on November 20, 2006. He wrote that petitioner is "a highly motivated and quality-driven professional." Dr. Truong recommends that petitioner's license be reinstated.

18. Hien Nguyen is a licensed pharmacist in California. He recommends that petitioner's license be reinstated and describes petitioner as a perfect professional who is "committed, dedicated, and hardworking."

19. George Winford Cole wrote an undated letter in which he said he had known petitioner for five years. Mr. Cole finds petitioner to be of good moral character and wrote that petitioner is always ready to help people understand how to care for themselves.

20. Kenneth A. Morgan wrote a letter dated November 20, 2006. He has known petitioner for five years. He wrote that petitioner is always willing to give health advice to friends and neighbors. Mr. Morgan has a degree in electrical engineering and has discussed scientific subjects with petitioner. He wrote that petitioner is knowledgeable and honest and a person of integrity and good character.

21. All four of the above letter writers were aware that the board had disciplined petitioner's license.

22. Petitioner also submitted a letter from Albert L. Picchioni, Ph.D., the associate dean of the pharmacy school from which petitioner was graduated in 1984. Dr. Picchioni praises petitioner highly. The letter, however, is dated 1984 and has no bearing on petitioner's rehabilitation.

LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 15 through 21, it is determined that petitioner has made substantial progress toward rehabilitation and that it would not be against the public interest to issue a probationary license. Petitioner completed his prison term and supervised release. It has been nine years since petitioner's conviction and 14 years since the incidents that gave rise to the conviction. There is no evidence of petitioner's having engaged in any other wrongdoing. It appears that he has a stable family relationship. And while petitioner and his family live on his wife's modest income, he, nevertheless, paid the board's cost recovery. Finally, the letters of recommendation are reassuring.

2. By reason of the matters set forth in Findings 12 through 14, it is determined that petitioner has satisfactorily maintained his knowledge as a pharmacist.

3. Petitioner's license should be reinstated subject to appropriate conditions of probation. One appropriate condition is that petitioner take and pass the California Pharmacy Jurisprudence Examination. Even if one were to assume that petitioner did not participate in the mail fraud, he, nevertheless, engaged in an egregious failure to discharge the responsibility of a pharmacist-in-charge. After becoming suspicious that the owner of the pharmacy was defrauding Medi-Cal, petitioner continued to work at the pharmacy without notifying anyone. Petitioner's failure to discharge his responsibility would have been reprehensible no matter how little money was involved, but it is worth noting that in this case a substantial amount was involved. Medi-Cal paid more than \$160,000 on the fraudulent claims. Thus, it is appropriate to have further assurance that petitioner has come to understand the responsibilities of a pharmacist.

ORDER

The petition for reinstatement is granted. If petitioner satisfies all statutory and regulatory requirements for issuance of a license, the board shall reinstate his license. The license shall immediately be revoked. The revocation shall be stayed, however, for five years, and petitioner shall be placed on probation on the following conditions:

1. Petitioner shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy. Petitioner shall report any of the following occurrences to the board, in writing, within 72 hours of such occurrence: an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state or federal food and drug laws, or state or federal controlled substances laws; a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information, or indictment; a conviction of any crime; discipline, citation, or other administrative action filed by any state or federal agency that involves petitioner's license or that is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing for, or charging for any drug, device, or controlled substance.
2. Petitioner shall report to the board quarterly. The report shall be made either in person or in writing, as directed. Petitioner shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the board.
3. On receipt of reasonable notice, petitioner shall appear in person for interviews with the board on request at various intervals at a location to be determined by the board. Failure to appear for a scheduled interview without prior notification to board staff shall be considered a violation of probation.
4. Petitioner shall cooperate with the board's inspectional program and in the board's monitoring and investigation of petitioner's compliance with the terms and conditions of his or her probation. Failure to comply shall be considered a violation of probation.
5. Petitioner shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the board.
6. Petitioner shall notify all present and prospective employers of this decision and the terms, conditions, and restrictions imposed on petitioner by this decision. Within 30 days of the effective date of this decision, and within 15 days of petitioner undertaking new employment, petitioner shall cause his or her direct supervisor, pharmacist-in-charge, and/or owner to report to the

board in writing acknowledging that the employer has read this decision. If petitioner works for or is employed by or through a pharmacy employment service, petitioner must notify the direct supervisor, pharmacist-in-charge, and/or owner at every pharmacy of the terms and conditions of this decision in advance of petitioner's commencing work at each pharmacy. "Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief, or pharmacy management service as a pharmacist, whether petitioner is considered an employee or independent contractor.

7. Petitioner shall not supervise any intern pharmacist or perform any of the duties of a preceptor. Petitioner shall not be the pharmacist-in-charge of any entity licensed by the board unless otherwise specified in this order.
8. Petitioner shall pay the costs associated with probation monitoring as determined by the board each year of probation. Such costs shall be payable to the board at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation.
9. Petitioner 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. If petitioner's license expires or is cancelled by operation of law or otherwise, on renewal or reapplication, petitioner's license shall be subject to all terms and conditions of this probation not previously satisfied.
10. Following the effective date of this decision, should petitioner cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, petitioner may tender his or her license to the board for surrender. The board shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. On formal acceptance of the surrender of the license, petitioner will no longer be subject to the terms and conditions of probation. On acceptance of the surrender, petitioner shall relinquish his or her pocket license to the board within 10 days of notification by the board that the surrender is accepted. Petitioner may not reapply for any license from the board for three years from the effective date of the surrender. Petitioner shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.
11. Petitioner shall notify the board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving and/or the address of the new employer, supervisor, or owner and work schedule if known. Petitioner shall notify the board in writing within 10 days of a change in name, mailing address, or phone number.

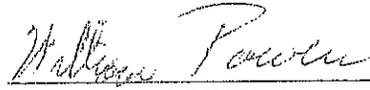
12. Should petitioner, regardless of residency, for any reason cease practicing pharmacy for a minimum of 80 hours per calendar month in California, petitioner must notify the board in writing within 10 days of cessation of the practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for petitioner's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three years. "Cessation of practice" means any period of time exceeding 30 days in which petitioner is not engaged in the practice of pharmacy as defined in Section 4052 of the Business and Professions Code for at least 80 hours a calendar month.
13. If petitioner violates probation in any respect, the board, after giving petitioner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against petitioner during probation, the board shall have continuing jurisdiction, and the period of probation shall be extended until the petition to revoke probation or accusation is heard and decided.
14. If petitioner has not complied with any term or condition of probation, the board shall have continuing jurisdiction over petitioner, 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.
15. Petitioner shall take and pass the California Pharmacy Jurisprudence Examination (CPJE) as scheduled by the board after the effective date of this decision at petitioner's own expense. If petitioner fails to take and pass the examination within six months after the effective of this decision, petitioner shall be suspended from practice on written notice. Petitioner shall not resume the practice of pharmacy until he or she takes and passes the CPJE at a subsequent examination and is notified, in writing, that he or she has passed the examination. During suspension, petitioner shall not enter any pharmacy area. During suspension, petitioner shall not enter any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer, any other distributor of drugs, any manufacturer, or any place where dangerous drugs and devices or controlled substances are maintained. During suspension, petitioner shall not practice pharmacy or do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing, or patient consultation. During suspension, petitioner shall not manage, administer, or be a consultant to any licensee of the board. During suspension, petitioner shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and controlled substances. During suspension, petitioner shall not engage in any activity that requires the professional judgment of a pharmacist. During suspension, petitioner shall not direct or control any

aspect of the practice of pharmacy. During suspension, petitioner shall not perform the duties of a pharmacy technician or an exemptee for any entity licensed by the board. Subject to the above restrictions, petitioner may continue to own or hold an interest in any pharmacy in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order. Failure to take and pass the examination within one year of the effective date of this decision shall be considered a violation of probation. Suspension and probation shall be extended until petitioner passes the examination and is notified in writing.

16. On petitioner's successful completion of probation, his or her license will be fully restored.

DATED: May 31, 2007

Effective Date: June 6, 2007



WILLIAM POWERS

President

California State Board of Pharmacy

Exhibit B

Decision and Order

In the Matter of the Petition for Reinstatement of Certificate to

Practice Pharmacy of Chu Huu Vu

Board of Pharmacy Case No. 2236-B

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

In the Matter of the Accusation Against:

Chu Huu Vu
C/O Healthcare Pharmacy
P.O. Box 712663
San Diego, CA 92171

License No. RPH 39728

Respondent.

Case No. 2236-B

OAH No. L-2000050335

DECISION AND ORDER

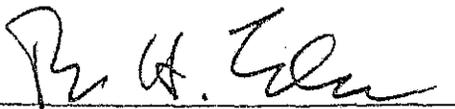
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy of the Department of Consumer Affairs as its Decision in the above entitled matter.

This Decision shall become effective on March 6, 2001.

It is so ORDERED February 5, 2001.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



ROBERT H. ELSNER
Board President

1 BILL LOCKYER, Attorney General
of the State of California
2 LINDA K. SCHNEIDER, State Bar No. 101336
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, California 92101

5 P.O. Box 85266
San Diego, California 92186-5266
6 Telephone: (619) 645-3037
Facsimile: (619) 645-2061

7 Attorneys for Complainant
8

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

12 In the Matter of the Accusation Against:

13 Chu Huu Vu
C/O Healthcare Pharmacy
14 P.O. Box 712663
San Diego, CA 92171

15 License No. RPH 39728

16 Respondent.
17

Case No. 2236-B

OAH No. L-2000050335

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

21 PARTIES

22 1. Complainant Patricia F. Harris is the Executive Officer of the Board of
23 Pharmacy who brought this action solely in her official capacity and is represented in this matter
24 by Bill Lockyer, Attorney General of the State of California, by Linda K. Schneider, Deputy
25 Attorney General.

26 2. Respondent Chu Huu Vu ("Respondent") is represented in this proceeding
27 by attorney Robert F. Hahn, Law Offices of Gould & Hahn, whose address is 5801 Christ
28 Avenue, Suite 385, Emeryville, CA 94608.

RECEIVED
FEBRUARY 1998
AMERICAN HERMETS
BY MAIL
CALIFORNIA BOARD OF PHARMACY
110 WEST "A" STREET, SUITE 1100
SAN DIEGO, CALIFORNIA 92101
TEL: (619) 645-3037
FAX: (619) 645-2061

1 Accusation No. 2236-B.

2 10. Respondent agrees that his Pharmacist's license is subject to discipline and
3 he agrees to be bound by the Board's imposition of discipline as set forth in the Order below.

4 CONTINGENCY

5 11. This stipulation shall be subject to the approval of the Board. Respondent
6 understands and agrees that Board of Pharmacy's staff and counsel for Complainant may
7 communicate directly with the Board regarding this stipulation and settlement, without notice to
8 or participation by Respondent or his counsel. If the Board fails to adopt this stipulation as its
9 Order, except for this paragraph the Stipulated Settlement and Disciplinary Order shall be of no
10 force or effect, it shall be inadmissible in any legal action between the parties, and the Board
11 shall not be disqualified from further action in this matter by virtue of its consideration of this
12 stipulation.

13 12. The parties agree that facsimile copies of this Stipulated Settlement and
14 Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as
15 the original Stipulated Settlement and Disciplinary Order and signatures.

16 13. In consideration of the foregoing admissions and stipulations, the parties
17 agree that the Board shall, without further notice or formal proceeding, issue and enter the
18 following Disciplinary Order:

19
20 DISCIPLINARY ORDER

21 **IT IS HEREBY ORDERED** that Original Pharmacist License Number RPH
22 39728 issued to Respondent Chu Huu Vu is revoked. Pursuant to Business and Professions
23 Code section 4309, Respondent shall be prohibited from filing a petition for reinstatement of his
24 license or applying for relicensure by the Board for at least three (3) years from the effective date
25 of this Order. Respondent must make full payment for cost recovery to the Board in the amount
26 of \$8,000.00 (Eight Thousand Dollars) and submit proof that full and complete payment has
27 been made, as a condition precedent to any petition for reinstatement of his license or future
28 application Respondent may make to the Board for relicensure by the Board.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order, have fully discussed the terms and conditions and other matters contained therein with my attorney Robert F. Hahn, and I understand the effect this stipulation will have on my Pharmacist's license. I enter into this Stipulated Settlement voluntarily, knowingly and intelligently and agree to be bound by the Disciplinary Order and Decision of the Board of Pharmacy. I further agree that a facsimile copy of this Stipulated Settlement and Disciplinary Order, including facsimile copies of signatures, may be used with the same force and effect as the originals.

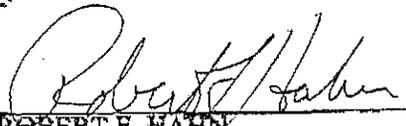
DATED: Nov. 1st, 2000



CHU HUU VU
Respondent

I have read and fully discussed with Respondent Chu Huu Vu the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order and approve its form and content.

DATED: 11/13/2000



ROBERT F. HAHN
Attorney for Respondent

ENDORSEMENT

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

DATED: 12/7/2000

BILL LOCKYER, Attorney General
of the State of California



LINDA K. SCHNEIDER
Deputy Attorney General
Attorneys for Complainant

Exhibit A:
Accusation in Case No. 2236-B

1 BILL LOCKYER, Attorney General
of the State of California
2 LINDA K. SCHNEIDER
Deputy Attorney General,
3 State Bar No. 101336
Department of Justice
4 110 West A Street, Suite 1100
Post Office Box 85266
5 San Diego, California 92186-5266
Telephone: (619) 645-3037

6 Attorneys for Complainant
7

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

11 In the Matter of the Accusation) NO. 2 2 3 6 - B
Against:)

12 Chu Huu Vu) ACCUSATION
13 3156 Clairemont Drive)
14 San Diego, CA 92117)
15 License No. RPH 39728)

16 _____)
17 Hoang Mau Nguyen)
18 aka, Harry Nguyen)
19 7538 Clear Sky Road)
20 San Diego, CA 92120)
License No. TCH 9544)
21 Respondents.)

22
23 Complainant Patricia F. Harris, as causes for
24 disciplinary action, alleges:

25
26 PARTIES

27 1. Complainant is the Executive Officer of the
28 California State Board of Pharmacy ("Board") and makes and files

1 this accusation solely in her official capacity.

2 License Status

3 2. On or about August 7, 1986, the Board issued
4 Original Pharmacist-License Number RPH 39728 to Chu Huu Vu to
5 practice pharmacy in California. That registration is in full
6 force and effect until January 31, 2002. Chu Huu Vu was the PIC
7 of Ulric Pharmacy from October 10, 1991 to June 30, 1993, at
8 which time he disassociated from Ulric Pharmacy.^{1/} Chu Huu Vu
9 was the PIC of Delta Pharmacy from November 17, 1993 until
10 December 15, 1993, at which time he disassociated from Delta
11 Pharmacy.^{2/}

12 3. On or about September 9, 1993, the Board issued
13 Original Pharmacy Technician Registration Number TCH 9544 to
14 Harry Hoang Mau Nguyen to act as a pharmacy technician in
15 California. The registration is in full force until its
16 expiration date of March 31, 2001. Hoang Mau Nguyen was an owner
17 of Ulric Pharmacy from January 15, 1991 until October 19, 1993
18 when he disassociated from Ulric Pharmacy.

19
20

JURISDICTION

21 4. This Accusation refers to the following statutes of
22 the California Business and Professions Code ("Code"):

23

24 1. Ulric Pharmacy was sold and no longer has a registration
25 number subject to renewal. Therefore, pursuant to Code section
26 118(b), no charges are made against Ulric Pharmacy in this
Accusation.

27 2. Delta Pharmacy was closed and no longer has a
28 registration number subject to renewal. Therefore, pursuant to
Code section 118(b), no charges are made against Delta Pharmacy
in this Accusation.

1 A. Section 4300 provides, in part, that every license
2 issued may be suspended or revoked.

3 B. Section 4301 provides, in part, that "the board
4 shall take action against any holder of a license who is
5 guilty of unprofessional conduct or whose license has been
6 procured by fraud or misrepresentation or issued by mistake.
7 Unprofessional conduct shall include, but is not limited
8 to:"

9
10 "(f) The commission of any act involving moral
11 turpitude, dishonesty, fraud, deceit, or corruption, whether
12 the act is committed in the course of relations as a
13 licensee or otherwise, and whether the act is a felony or
14 misdemeanor or not.

15
16 "(1) The conviction of a crime substantially related to
17 the qualifications, functions, and duties of a licensee
18 under this chapter. . . ."

19 C. Section 118(b) provides:

20 "The suspension, expiration, or forfeiture by operation
21 of law of a license issued by a board in the department, or
22 its suspension, forfeiture, or cancellation by order of the
23 board or by order of a court of law, or its surrender
24 without the written consent of the board, shall not, during
25 any period in which it may be renewed, restored, reissued,
26 or reinstated, deprive the board of its authority to
27 institute or continue a disciplinary proceeding against the
28 licensee upon any ground provided by law or to enter an

1 order suspending or revoking the license or otherwise taking
2 disciplinary action against the licensee on any such
3 ground. "

4 D. Section 4307 provides:

5 "(a) Any person who has been denied a license or whose
6 license has been revoked or is under suspension, or who has
7 failed to renew his or her license while it was under
8 suspension, or who has been a manager, administrator, owner,
9 member, officer, director, associate, or partner of any
10 partnership, corporation, firm, or association whose
11 application for a license has been denied or revoked, is
12 under suspension or has been placed on probation, and while
13 acting as the manager, administrator, owner, member,
14 officer, director, associate, or partner had knowledge of or
15 knowingly participated in any conduct for which the license
16 was denied, revoked, suspended, or placed on probation,
17 shall be prohibited from serving as a manager,
18 administrator, owner, member, officer, director, associate,
19 or partner of a licensee as follows:

20 (1) Where a probationary license is issued or where an
21 existing license is placed on probation, this
22 prohibition shall remain in effect for a period not to
23 exceed five years.

24 (2) Where the license is denied or revoked, the
25 prohibition shall continue until the license is issued
26 or reinstated. . . ."

27 E. Section 125.3 provides, in part, that, "the board
28 may request the administrative law judge to direct any

1 licentiate found to have committed a violation or violations
2 of the licensing act, to pay a sum not to exceed the
3 reasonable costs of the investigation and enforcement of the
4 case."

5 5. This Accusation is also made in reference to the
6 following statutes of the United States Code:

7 A. Title 18 Section 1341 provides, in part, that:

8 "Whoever, having devised or intending to devise any
9 scheme or artifice to defraud, or for obtaining money or
10 property by means of false or fraudulent pretenses . . .
11 places in any post office or authorized depository for mail
12 matter, any matter or thing whatever to be sent or delivered
13 by the Postal Service . . . shall be fined under this title
14 or imprisoned not more than five years, or both . . ."

15 B. Title 18 Section 1342 provides, in part, that:

16 "Whoever, for the purpose of conducting, promoting, or
17 carrying on by means of the Postal Service, any scheme or
18 device mentioned in section 1341 of this title or any other
19 unlawful business, uses or assumes, or requests to be
20 addressed by, any fictitious, false, or assumed title, name,
21 or address or name other than his own proper name . . .
22 shall be fined under this title or imprisoned not more than
23 five years, or both."

24 C. Title 18 Section 1344 provides:

25 "Whoever knowingly executes, or attempts to execute, a
26 scheme or artifice -

27 (1) to defraud a financial institution; or

28 (2) to obtain any of the moneys, funds, credits,

1 assets, securities, or other property owned by, or under the
2 custody or control of, a financial institution, by means of
3 false or fraudulent pretenses, representations, or promises;
4 shall be fined not more than \$1,000,000 or imprisoned
5 not more than 30 years, or both."

6 D. Title 18 Section 1961(4) defines "enterprise" under
7 Chapter 96 - "Racketeer Influenced And Corrupt
8 Organizations," as follows:

9 "enterprise" includes any individual, partnership,
10 corporation, association, or other legal entity, and any
11 union or group of individuals associated in fact although
12 not a legal entity."

13 E. Title 18 Section 1962(d) makes it a criminal
14 offense to conspire in any racketeering activity.

15 F. Title 18 Section 1963 provides penalties for
16 violation of section 1962 which include, a fine of not more
17 than \$25,000, imprisonment of not more than 20 years, or
18 both, and forfeiture to the United States of any interest
19 acquired or maintained in violation of section 1962.

20 G. Title 26 Section 7206(1) provides that,

21 "Any person who willfully makes and subscribes any
22 return, statement, or other document, which contains or is
23 verified by a written declaration that it is made under the
24 penalties of perjury, and which he does not believe to be
25 true and correct as to every material matter shall be guilty
26 of a felony and, upon conviction thereof, shall be fined not
27 more than \$100,000 (\$500,000 in the case of a corporation),
28 or imprisoned not more than 3 years, or both, together with

1 the costs of prosecution."

2

3

FIRST CAUSE OF ACTION

4

RESPONDENT, CHU HUU VU

5

[Section 4301(1) - Conviction of a Crime

6

Substantially Related to the Practice of Pharmacy]

7

8 6. A criminal indictment was filed against Chu Huu Vu
9 and Hoang Mau Nguyen, inter alia, in the United States District
10 Court, Southern District of California under case number
11 97CRO934-K. The indictment was subsequently amended by a
12 Superceding Indictment bearing the same case number.

13

14 7. Pursuant to that Superceding Indictment, on or about
15 January 16, 1998 in the United States District Court, Southern
16 District of California, respondent, Chu Huu Vu, pled guilty and
17 was sentenced for violation of 18 USC 1341.2 [Aiding and Abetting
18 Mail Fraud - Count 23, 24 and 25 of the indictment].

19

20 8. Respondent, CHU HUU VU was sentenced to the
21 following:

22

• Penalty assessment of \$150.00 pursuant to 18 USC
23 3003

24

• Imprisonment of 24 months

25

• Upon release from imprisonment, supervised release
26 for 3 years

27

• While on supervised release, not commit another
28 federal, state or local crime and comply with the
standard conditions adopted by the court. Pay
restitution obligation remaining unpaid at the
commencement of supervised release.

1 9. The facts surrounding the conviction were:
2 From January 1991 to November 1993, Dung My Thi Nguyen
3 and Due Huu Nguyen were partners and true owners of Ulric
4 Pharmacy, and were co-signatories on the Ulric Pharmacy bank
5 account. Hoang Mau Nguyen was a paper co-owner with Dung Thi
6 Nguyen of Ulric Pharmacy, and he signed claim forms that were
7 submitted to the Medi-Cal Program. Dat Tat Nguyen was the de
8 facto on-site manager of Ulric Pharmacy, and he was responsible
9 for reviewing the billing information entered into Ulric
10 Pharmacy's computer, which in turn generated claims submitted to
11 Medi-Cal. Chu Huu Vu was the pharmacist-in-charge (PIC) at Ulric
12 Pharmacy, and was responsible for the dispensing and labeling of
13 prescription medications.

14 10. Due Huu Nguyen and Dung My Thi Nguyen had
15 ownership interests in Primary Medical Clinic, which referred all
16 its prescriptions exclusively to Dan Rx and Ulric Pharmacies.

17 11. Between January 1991 and November 1993,
18 respondent, Chu Huu Vu, conspired with Dung My Thi Nguyen, Due
19 Huu Nguyen, Dat Tat Nguyen and Hoang Mau Nguyen to submit
20 fraudulent claims to the Medi-Cal program from Ulric Pharmacy.
21 The claims were fraudulent in that they overstated the amounts of
22 medications actually dispensed or prescribed for the patients.
23 As a result of the scheme and conspiracy, through which Ulric
24 Pharmacy fraudulently obtained from Medi-Cal more than \$160,000,
25 Medi-Cal sent the following checks through the United States mail
26 to Ulric Pharmacy to pay for fraudulent claims:

27 a. Check number 34359887, dated April 23, 1992 (as was
28 further described in Count 23 of the Superceding Indictment)

defendant, Dat Tat Nguyen] or forfeiture of real property located at 7538 Clear Sky Road, San Diego, California 92120

- Penalty assessment of \$200.00 pursuant to 18 USC 3003
- Imprisonment of 14 months
- Upon release from imprisonment, Supervised Release for 3 years
- While on supervised release, not commit another federal, state or local crime and comply with the standard conditions adopted by the court. Pay restitution obligation remaining unpaid at the commencement of supervised release.

16. The facts which gave rise to the conviction were as follows:

From January 1991 to November 1993, Dung My Thi Nguyen and Due Huu Nguyen were partners and true owners of Ulric Pharmacy, and were co-signatories on the Ulric Pharmacy bank account. Hoang Mau Nguyen was a paper co-owner with Dung My Thi Nguyen of Ulric Pharmacy, and he signed claim forms that were submitted to the Medi-Cal Program. Dat Tat Nguyen was the de facto on-site manager of Ulric Pharmacy, and he was responsible for reviewing the billing information entered into the Ulric Pharmacy's computer, which in turn generated claims submitted to Medi-Cal. Chu Huu Vu was the pharmacist-in-charge (PIC) at Ulric Pharmacy, and was responsible for the dispensing and labeling of prescription medications.

17. Due Huu Nguyen and Dung My Thi Nguyen had

1 ownership interests in Primary Medical Clinic, which referred all
2 its prescriptions exclusively to Dan Rx and Ulric Pharmacies.

3 18. Between January 1991 and November 1993,
4 respondent, Hoang Mau Nguyen, conspired with others to submit
5 fraudulent claims to the Medi-Cal program from Ulric Pharmacy.
6 The claims were fraudulent in that they overstated the amounts of
7 medications actually dispensed or prescribed for the patients.
8 As a result of the scheme and conspiracy, Medi-Cal sent the
9 following checks through the United States mail to Ulric Pharmacy
10 to pay for fraudulent claims:

11 a. Check number 34359887, dated April 23, 1992 (as was
12 further described in Count 23 of the Superceding Indictment)

13 b. Check number 38057881, dated February 4, 1993 (as
14 was further described in Count 24 of the Superceding Indictment)

15 c. Check number 38192091, dated February 11, 1993 (as
16 was further described in Count 25 of the Superceding Indictment)

17 19. Between May 22, 1991 and March 31, 1992,
18 respondent, Hoang Mau Nguyen, received \$6,519 from the Employment
19 Development Department of the state of California as unemployment
20 compensation. During that time, however, respondent, Hoang Mau
21 Nguyen, worked at Ulric Pharmacy and received a salary of
22 approximately \$250/week. He never disclosed to EDD that he was
23 employed by Ulric Pharmacy. Had EDD known that respondent, Hoang
24 Mau Nguyen, was employed by Ulric Pharmacy and was receiving a
25 weekly salary of approximately \$250/week, he would have been
26 deemed ineligible to receive the unemployment benefits.

27 20. In September, 1992, respondent, Hoang Mau Nguyen,
28 applied for a home loan from Great Western Bank to purchase a

1 residence at 7538 Clear Sky Road, San Diego, California. In that
2 application, respondent, Hoang Mau Nguyen, knowingly falsely
3 stated that he had been employed by Dan Rx Pharmacy for three
4 years as the "billing controller," and overstated his income. He
5 also falsely stated that he had been in the pharmacy business for
6 six years, when in fact he had only been in the United States for
7 less than three years.

8 21. Due Nguyen also signed Danh Nguyen's name on the
9 loan application, purporting to verify that Hoang Mau Nguyen was
10 employed at Dan Rx Pharmacy.

11 22. As a result of the above false statements,
12 respondent, Hoang Mau Nguyen, fraudulently received a loan in the
13 amount of \$157,000 from Great Western Bank. Had Great Western
14 Bank known that these statements were false, it would not have
15 funded the loan.

16 23. Respondent, Hoang Mau Nguyen, aka Harry Nguyen,
17 has subjected his license to discipline for violation of Code
18 section 4301(1), as is more particularly set forth above, by
19 suffering criminal convictions for violation of 18 USC 1341 and
20 1342 [Aiding and Abetting Mail Fraud - Counts 23, 24 and 25 of
21 the Superceding Indictment] and 18 USC 1342 and 1344 [Aiding and
22 Abetting Bank Fraud - Count 32 of the indictment] which are
23 crimes substantially related to the practice of pharmacy.

24

25

PRAYER

26

27

28

WHEREFORE, complainant requests that the Board hold a
hearing on the matters alleged herein, and that following said
hearing, the Board issue a decision:

