

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

In the Matter of the Statement of Issues Against:

Case No. 3889

**MIKE DUC CHAU
AKA MIKE VU CHAU
AKA VU DUC CHAU
301 S. Fremont Ave., #A
Alhambra, CA 91801
Pharmacy Technician Application**

**OAH NO.: L-2011050984
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

Respondent.

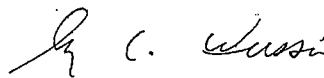
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order 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 23, 2012.

It is so ORDERED on March 23, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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Attorney General of California
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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues
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Pharmacy Technician Application

16 Respondent.

Case No. 3889

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**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

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

25 2. Respondent Mike Duc Chau aka Mike Vu Chau aka Vu Duc Chau (Respondent) is
26 represented in this proceeding by attorney James Victor Kosnett, Esq., whose address is: James
27 Victor Kosnett, Esq., Law Offices of Kosnett & Durchfort 11355 West Olympic Blvd., Suite 300,
28 Los Angeles, CA 90064.

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RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

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

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

13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

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1 **1. Obey All Laws**

2 Respondent shall obey all state and federal laws and regulations.

3 Respondent shall report any of the following occurrences to the board, in writing, within
4 seventy-two (72) hours of such occurrence:

- 5 an arrest or issuance of a criminal complaint for violation of any provision of the
6 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
7 substances laws
- 8 a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
9 criminal complaint, information or indictment
- 10 a conviction of any crime
- 11 discipline, citation, or other administrative action filed by any state or federal agency
12 which involves respondent's Registration as a Pharmacy Technician or which is
13 related to the practice of pharmacy or the manufacturing, obtaining, handling,
14 distributing, billing, or charging for any drug, device or controlled substance.

15 Failure to timely report any such occurrence shall be considered a violation of probation.

16 **2. Report to the Board**

17 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
18 designee. The report shall be made either in person or in writing, as directed. Among other
19 requirements, respondent shall state in each report under penalty of perjury whether there has
20 been compliance with all the terms and conditions of probation. Failure to submit timely reports
21 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
22 in submission of reports as directed may be added to the total period of probation. Moreover, if
23 the final probation report is not made as directed, probation shall be automatically extended until
24 such time as the final report is made and accepted by the board.

25 **3. Interview with the Board**

26 Upon receipt of reasonable prior notice, respondent shall appear in person for interviews
27 with the board or its designee, at such intervals and locations as are determined by the board or its
28 designee. Failure to appear for any scheduled interview without prior notification to board staff,

1 or failure to appear at two (2) or more scheduled interviews with the board or its designee during
2 the period of probation, shall be considered a violation of probation.

3 **4. Cooperate with Board Staff**

4 Respondent shall cooperate with the board's inspection program and with the board's
5 monitoring and investigation of respondent's compliance with the terms and conditions of his
6 probation. Failure to cooperate shall be considered a violation of probation.

7 **5. Notice to Employers**

8 During the period of probation, respondent shall notify all present and prospective
9 employers of the decision in case number 3889 and the terms, conditions and restrictions imposed
10 on respondent by the decision, as follows:

11 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
12 respondent undertaking any new employment, respondent shall cause his direct supervisor,
13 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
14 tenure of employment) and owner to report to the board in writing acknowledging that the listed
15 individual(s) has/have read the decision in case number 3889 and the terms and conditions
16 imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or
17 supervisor(s) submit timely acknowledgement(s) to the board.

18 If respondent works for or is employed by or through a pharmacy employment service,
19 respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy
20 of the terms and conditions of the decision in case number 3889 in advance of the respondent
21 commencing work at each pharmacy. A record of this notification must be provided to the board
22 upon request.

23 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
24 (15) days of respondent undertaking any new employment by or through a pharmacy employment
25 service, respondent shall cause his direct supervisor with the pharmacy employment service to
26 report to the board in writing acknowledging that he has read the decision in case number 3889
27 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
28 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

1 Failure to timely notify present or prospective employer(s) or to cause that/those
2 employer(s) to submit timely acknowledgements to the board shall be considered a violation of
3 probation.

4 "Employment" within the meaning of this provision shall include any full-time,
5 part-time, temporary or relief service or pharmacy management service as a pharmacy
6 technician or in any position for which a pharmacy technician license is a requirement
7 or criterion for employment, whether the respondent is considered an employee,
8 independent contractor or volunteer.

9 **6. Probation Monitoring Costs**

10 Respondent shall pay any costs associated with probation monitoring as determined by the
11 board each and every year of probation. Such costs shall be payable to the board on a schedule as
12 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
13 be considered a violation of probation.

14 **7. Status of License**

15 Respondent shall, at all times while on probation, maintain an active, current pharmacy
16 technician license with the board, including any period during which suspension or probation is
17 tolled. Failure to maintain an active, current license shall be considered a violation of probation.

18 If respondent's pharmacy technician license expires or is cancelled by operation of law or
19 otherwise at any time during the period of probation, including any extensions thereof due to
20 tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all
21 terms and conditions of this probation not previously satisfied.

22 **8. License Surrender While on Probation/Suspension**

23 Following the effective date of this decision, should respondent cease work due to
24 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
25 respondent may tender his pharmacy technician license to the board for surrender. The board or
26 its designee shall have the discretion whether to grant the request for surrender or take any other
27 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the
28 license, respondent will no longer be subject to the terms and conditions of probation. This

1 surrender constitutes a record of discipline and shall become a part of the respondent's license
2 history with the board.

3 Upon acceptance of the surrender, respondent shall relinquish his pharmacy technician
4 license to the board within ten (10) days of notification by the board that the surrender is
5 accepted. Respondent may not reapply for any license, permit, or registration from the board for
6 three (3) years from the effective date of the surrender. Respondent shall meet all requirements
7 applicable to the license sought as of the date the application for that license is submitted to the
8 board.

9 **9. Notification of a Change in Name, Residence Address, Mailing Address or**
10 **Employment**

11 Respondent shall notify the board in writing within ten (10) days of any change of
12 employment. Said notification shall include the reasons for leaving, the address of the new
13 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
14 shall further notify the board in writing within ten (10) days of a change in name, residence
15 address and mailing address, or phone number.

16 Failure to timely notify the board of any change in employer(s), name(s), address(es), or
17 phone number(s) shall be considered a violation of probation.

18 **10. Tolling of Probation**

19 Except during periods of suspension, respondent shall, at all times while on probation, be
20 employed as a pharmacy technician in California for a minimum of 20 hours per calendar month.
21 Any month during which this minimum is not met shall toll the period of probation, i.e., the
22 period of probation shall be extended by one month for each month during which this minimum is
23 not met. During any such period of tolling of probation, respondent must nonetheless comply
24 with all terms and conditions of probation.

25 Should respondent, regardless of residency, for any reason (including vacation) cease
26 working as a pharmacy technician for a minimum of 20 hours per calendar month in California,
27 respondent must notify the board in writing within ten (10) days of cessation of work and must
28 further notify the board in writing within ten (10) days of the resumption of the work. Any

1 failure to provide such notification(s) shall be considered a violation of probation.

2 It is a violation of probation for respondent's probation to remain tolled pursuant to the
3 provisions of this condition for a total period, counting consecutive and non-consecutive months,
4 exceeding thirty-six (36) months.

5 "Cessation of work" means calendar month during which respondent is not
6 working for at least 20 hours as a pharmacy technician, as defined in Business and
7 Professions Code section 4115. "Resumption of work" means any calendar month
8 during which respondent is working as a pharmacy technician for at least 20 hours as
9 a pharmacy technician as defined by Business and Professions Code section 4115.

10 **11. Violation of Probation**

11 If a respondent has not complied with any term or condition of probation, the board shall
12 have continuing jurisdiction over respondent, and probation shall automatically be extended, until
13 all terms and conditions have been satisfied or the board has taken other action as deemed
14 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
15 to impose the penalty that was stayed.

16 If respondent violates probation in any respect, the board, after giving respondent notice
17 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
18 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
19 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
20 a petition to revoke probation or an accusation is filed against respondent during probation, the
21 board shall have continuing jurisdiction, and the period of probation shall be automatically
22 extended until the petition to revoke probation or accusation is heard and decided.

23 **12. Completion of Probation**

24 Upon written notice by the board indicating successful completion of probation,
25 respondent's pharmacy technician license will be fully restored.

26 **No Ownership of Licensed Premises**

27 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
28 administrator, member, officer, director, trustee, associate, or partner of any business, firm,

1 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
2 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
3 days following the effective date of this decision and shall immediately thereafter provide written
4 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
5 documentation thereof shall be considered a violation of probation.

6 **13. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

7 At any time during the period of probation, if respondent has a positive drug screen for any
8 substance not legally authorized, respondent shall begin regular attendance at a recognized and
9 established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous,
10 Narcotics Anonymous, etc.) which has been approved by the board or its designee. Respondent
11 must attend at least one group meeting per week unless otherwise directed by the board or its
12 designee. Respondent shall continue regular attendance and submit signed and dated
13 documentation confirming attendance with each quarterly report for the duration of probation.
14 Failure to attend or submit documentation thereof shall be considered a violation of probation.

15 **14. Random Drug Screening**

16 Respondent, at his own expense, shall participate in random testing, including but not
17 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
18 screening program as directed by the board or its designee. Respondent may be required to
19 participate in testing for the entire probation period and the frequency of testing will be
20 determined by the board or its designee. At all times respondent shall fully cooperate with the
21 board or its designee, and shall, when directed, submit to such tests and samples for the detection
22 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its
23 designee may direct. Failure to timely submit to testing as directed shall be considered a violation
24 of probation. Upon request of the board or its designee, respondent shall provide documentation
25 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is
26 a necessary part of the treatment of the respondent. Failure to timely provide such documentation
27 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any
28 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment

1 shall be considered a violation of probation and shall result in the automatic suspension of work
2 by respondent. Respondent may not resume work as a pharmacy technician until notified by the
3 board in writing.

4 During suspension, respondent shall not enter any pharmacy area or any portion of or any
5 other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other
6 distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and
7 devices or controlled substances are maintained. Respondent shall not do any act involving drug
8 selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent
9 manage, administer, or assist any licensee of the board. Respondent shall not have access to or
10 control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled
11 substances. Respondent shall not resume work until notified by the board.

12 Respondent shall not direct, control or perform any aspect of the practice of pharmacy.
13 Subject to the above restrictions, respondent may continue to own or hold an interest in any
14 licensed premises in which he holds an interest at the time this decision becomes effective unless
15 otherwise specified in this order.

16 Failure to comply with this suspension shall be considered a violation of probation.

17 **15. Work Site Monitor**

18 Within ten (10) days of the effective date of this decision, respondent shall identify a work
19 site monitor, for prior approval by the board, who shall be responsible for supervising respondent
20 during working hours. Respondent shall be responsible for ensuring that the work site monitor
21 reports in writing to the board quarterly. Should the designated work site monitor determine at
22 any time during the probationary period that respondent has not maintained sobriety, he shall
23 notify the board immediately, either orally or in writing as directed. Should respondent change
24 employment, a new work site monitor must be designated, for prior approval by the board, within
25 ten (10) days of commencing new employment. Failure to identify an acceptable initial or
26 replacement work site monitor, or to ensure quarterly reports are submitted to the board, shall be
27 considered a violation of probation.

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1 **16. Notification of Departure**

2 Prior to leaving the probationary geographic area designated by the board or its designee for
3 a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in
4 writing of the dates of departure and return. Failure to comply with this provision shall be
5 considered a violation of probation.

6 **17. Abstain from Drugs and Alcohol Use**

7 Respondent shall completely abstain from the possession or use of alcohol, controlled
8 substances, dangerous drugs and their associated paraphernalia except when the drugs are
9 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon
10 request of the board or its designee, respondent shall provide documentation from the licensed
11 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the
12 treatment of the respondent. Failure to timely provide such documentation shall be considered a
13 violation of probation. Respondent shall ensure that he is not in the same physical location as
14 individuals who are using illicit substances even if respondent is not personally ingesting the
15 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia
16 not supported by the documentation timely provided, and/or any physical proximity to persons
17 using illicit substances, shall be considered a violation of probation.

18 **18. Community Services Program**

19 Within sixty (60) days of the effective date of this decision, respondent shall submit to the
20 board or its designee, for prior approval, a community service program in which respondent shall
21 provide free health-care related services on a regular basis to a community or charitable facility or
22 agency for at least 25 hours per year for the first two (2) years of probation. Within thirty (30)
23 days of board approval thereof, respondent shall submit documentation to the board
24 demonstrating commencement of the community service program. A record of this notification
25 must be provided to the board upon request. Respondent shall report on progress with the
26 community service program in the quarterly reports. Failure to timely submit, commence, or
27 comply with the program shall be considered a violation of probation.

28

Exhibit A

Statement of Issues No. 3889

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 MICHEL W. VALENTINE
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301 S. Fremont Ave., #A
Alhambra, CA 91801

STATEMENT OF ISSUES

15 Pharmacy Technician Application

16 Respondent.

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19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
22 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs
23 (Board).
- 24 2. On or about February 10, 2009, the Board received an application for registration as a
25 Pharmacy Technician from Mike Duc Chau aka Mike Vu Chau aka Vu Duc Chau (Respondent).
26 On or about January 30, 2009, Respondent certified under penalty of perjury to the truthfulness of
27 all statements, answers, and representations in the application. The Board denied the application
28 on July 2, 2010.

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6. Section 4300, subdivision (c), states, in pertinent part:

"The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. . . ."

7. Section 4301 states, in pertinent part, that "unprofessional conduct" is defined to include, but not be limited to, any of the following:

....

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

....

"(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.

....

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

....

"(l) The conviction of a crime substantially related to the qualifications, functions and duties of a licensee... 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. . . ."

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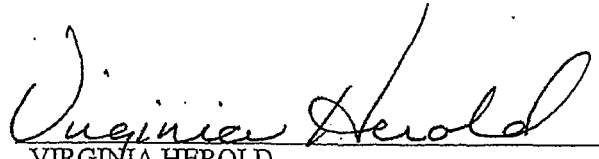
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P R A Y E R

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

1. Denying Mike Duc Chau's Pharmacy Technician Application; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 4/5/11



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

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