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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:

Case No. 4412

DEFAULT DECISION AND ORDER

NOU CHAI THAO
P.O. Box 233465
Sacramento, CA 95823

[Gov. Code, §11520]

Pharmacy Technician License No. TCH 78290

Respondent.

FINDINGS OF FACT

1. On or about January 17, 2013, 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. 4412 against Nou Chai Thao ("Respondent") before the Board. (A true and correct copy of the Petition to Revoke Probation is attached hereto, marked Exhibit A, and incorporated herein by reference.)

2. On or about October 4, 2007, the Board issued Pharmacy Technician License No. TCH 78290 to Respondent. The Pharmacy Technician License was suspended on February 24, 2012, and will expire on July 31, 2013, unless renewed.

1 3. On or about January 29, 2013, Respondent was served by Certified and First Class
2 Mail copies of the Petition to Revoke Probation No. 4412, Statement to Respondent, Notice of
3 Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,
4 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and
5 Professions Code section 4100, is required to be reported and maintained with the Board.
6 Respondent's address of record was and is: P.O. Box 233465, Sacramento, CA 95823.

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

10 5. On or about March 5, 2013, the aforementioned documents mailed to Respondent by
11 Certified Mail, Return Receipt Requested, were returned by the U.S. Postal Service marked
12 "Unclaimed."

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

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

17 7. Respondent failed to file a Notice of Defense within fifteen (15) days after service
18 upon him of the Petition to Revoke Probation, and therefore waived his right to a hearing on the
19 merits of Petition to Revoke Probation No. 4412.

20 8. California Government Code section 11520 states, in pertinent part:

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

24 9. Pursuant to its authority under Government Code section 11520, the Board of
25 Pharmacy finds Respondent is in default. The Board will take action without further hearing and,
26 based on the relevant evidence contained in the Default Decision Investigatory Evidence Packet
27 in this matter, as well as taking official notice of all the investigatory reports, exhibits and
28 statements contained therein on file at the Board's offices regarding the allegations contained in

1 Petition to Revoke Probation No. 4412. The Board finds that the charges and allegations in
2 Petition to Revoke Probation No. 4412 are separately and severally found to be true and correct
3 by clear and convincing evidence.

4 **DETERMINATION OF ISSUES**

5 1. Based on the foregoing findings of fact, Respondent Nou Chai Thao ("Respondent")
6 has subjected his Pharmacy Technician License No. TCH 78290 to discipline.

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

8 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
9 License No. TCH 78290 based upon the following violations alleged in the Petition to Revoke
10 Probation which are supported by the evidence contained in the Default Decision Evidence
11 Packet in this case:

12 a. Respondent violated Condition 17, Random Drug Screening, of his probation
13 terms and conditions as follows:

14 1. Respondent failed to call or log on to the First Lab System on the
15 following dates: September 4, 5, 11, and 26, 2011;

16 2. Respondent tested positive for ETG/ETS (alcohol) on or about September
17 26, 2011;

18 3. Respondent's license was suspended on October 3, 2011, based upon his
19 positive test for ETG/ETS (alcohol) on September 26, 2011. The suspension was lifted on
20 October 31, 2011;

21 4. Respondent failed to call or log on to the FirstLab system on October 8,
22 2011;

23 5. Respondent failed to submit to biological fluid testing (urine, blood),
24 breathalyzer, hair follicle testing, or other drug screening program on November 11, 2011.

25 6. Respondent failed to call or log on to the FirstLab system on November
26 24, 2011;

27 7. Respondent failed to submit to biological fluid testing (urine, blood),
28 breathalyzer, hair follicle testing, or other drug screening program on December 3, 2011;

1 8. Respondent tested positive for ETG/ETS (alcohol) on or about January 27,
2 2012.

3 9. Respondent's license was suspended on February 2, 2012, based upon his
4 positive test for ETG/ETS (alcohol) on January 27, 2012. The suspension was lifted on February
5 17, 2012;

6 10. Respondent tested positive for ETG/ETS (alcohol) on or about January 29,
7 2012, and February 12 and 19, 2012;

8 11. Respondent's license was suspended on February 24, 2012, based upon his
9 positive test for ETG/ETS (alcohol) on February 19, 2012.

10 b. Respondent violated Condition 19, Abstain from Drugs and Alcohol Use, of his
11 probation terms and conditions as follows: Respondent tested positive for ETG/ETS (alcohol) on
12 or about September 26, 2011, January 27 and 29, February 12 and 19, and June 5, 2012.

13 c. Respondent violated Condition 20, Community Services Program, of his probation
14 terms and conditions as follows: Respondent failed to timely submit to the Board or its designee,
15 a community services program for him to provide health-care related services to a community or
16 charitable facility or agency and failed to timely commence a community service program.

17 d. Respondent violated Condition 13, Violation of Probation, of his probation terms and
18 conditions as set forth above.

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ORDER

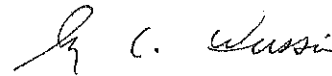
IT IS SO ORDERED that Pharmacy Technician License No. TCH 78290, heretofore issued to Respondent Nou Chai Thao, is **REVOKED**.

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

This Decision shall become effective on June 20, 2013.

It is so ORDERED ON May 21, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STANLEY C. WEISSER
Board President

Attachment:

Exhibit A: Petition to Revoke Probation

SA2012107790

Exhibit A

Petition to Revoke Probation

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 LESLIE A. BURGERMYER
Deputy Attorney General
4 State Bar No. 117576
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5337
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

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

Case No. 4412

12 **NOU CHAI THAO**
13 P.O. Box 233465
Sacramento, CA 95823

**PETITION TO REVOKE
PROBATION**

14 Pharmacy Technician License No. TCH 78290

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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

21 2. On or about October 4, 2007, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 78290 to Nou Chai Thao ("Respondent"). The Pharmacy Technician
23 License will expire on July 31, 2013, unless renewed.

24 **PRIOR DISCIPLINE**

25 3. In a disciplinary action titled "In the Matter of Statement of Issues Against: Nou Chai
26 Thao," Case No. 3786, the Board issued a Decision and Order, effective July 27, 2011, in which
27 Respondent's Pharmacy Technician License was revoked. However, the revocation was stayed
28 and Respondent was placed on probation for a period of four (4) years with certain terms and

1 conditions. A true copy of the Decision and Order is attached hereto, marked Exhibit A, and
2 incorporated by reference.

3 JURISDICTION

4 4. Business and Professions Code (Code") section 4300 provides, in pertinent part, that
5 the Board may discipline the holder of a Pharmacy Technician License for any reason provided in
6 the Pharmacy Law unless otherwise indicated.

7 5. Code section 118, subdivision (b), provides in pertinent part, that the expiration of a
8 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the
9 period within which the license may be renewed, restored, re-issued, or reinstated.

10 PETITION

11 6. Grounds exist for revoking the probation and re-imposing the order of revocation of
12 Respondent's Pharmacy Technician License No. TCH 78290. Condition 13 of the Board's
13 Decision and Order states:

14 **Violation of Probation** - If a Respondent has not complied with any term or
15 condition of probation, the Board shall have continuing jurisdiction over
16 Respondent, and probation shall automatically be extended, until all terms and
17 conditions have been satisfied or the Board has taken other action as deemed
18 appropriate to treat the failure to comply as a violation of probation, to terminate
19 probation, and to impose the penalty that was stayed.

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

7. Respondent has violated the probation program, as more particularly set forth in the
following paragraphs.

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1 FIRST CAUSE TO REVOKE PROBATION

2 (Failure to Report and Submit to Random Drug Screening;
3 Positive Drug Screens; Suspension)

4 8. At all times after the effective date of Respondent's probation, Condition 17 stated:

5 **Random Drug Screening** - Respondent, at his own expense, shall participate in
6 random testing, including but not limited to biological fluid testing (urine, blood),
7 breathalyzer, hair follicle testing, or other drug screening program as directed by the
8 board or its designee. Respondent may be required to participate in testing for the
9 entire probation period and the frequency of testing will be determined by the board
10 or its designee. At all times Respondent shall fully cooperate with the Board or its
11 designee, and shall, when directed, submit to such tests and samples for the
12 detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled
13 substances as the Board or its designee may direct. Failure to timely submit to
14 testing as directed shall be considered a violation of probation. Upon request of the
15 Board or its designee, Respondent shall provide documentation from a licensed
16 practitioner that the prescription for a detected drug was legitimately issued and is a
17 necessary part of the treatment of the respondent. Failure to timely provide such
18 documentation shall be considered a violation of probation. Any confirmed
19 positive test for alcohol or for any drug not lawfully prescribed by a licensed
20 practitioner as part of a documented medical treatment shall be considered a
21 violation of probation and shall result in the automatic suspension of work by
22 respondent. Respondent may not resume work as a pharmacy technician until
23 notified by the Board in writing.

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

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

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

9. Respondent's probation is subject to revocation because he failed to comply with
Condition 17, referenced above. The facts and circumstances regarding this violation are as
follows:

- a. Respondent failed to call or log on to the FirstLab system on September 4, 2011.
- b. Respondent failed to call or log on to the FirstLab system on September 5, 2011.

- 1 c. Respondent failed to call or log on to the FirstLab system on September 11, 2011.
- 2 d. Respondent tested positive for ETG/ETS (alcohol) on or about September 26, 2011.
- 3 e. Respondent's license was suspended on October 3, 2011, based upon his positive
- 4 test for ETG/ETS (alcohol) on September 26, 2011. The suspension was lifted on October 31,
- 5 2011.
- 6 f. Respondent failed to call or log on to the FirstLab system on October 8, 2011.
- 7 g. Respondent failed to submit to biological fluid testing (urine, blood), breathalyzer,
- 8 hair follicle testing, or other drug screening program on November 11, 2011.
- 9 h. Respondent failed to call or log on to the FirstLab system on November 24, 2011.
- 10 i. Respondent failed to submit to biological fluid testing (urine, blood), breathalyzer,
- 11 hair follicle testing, or other drug screening program on December 3, 2011.
- 12 j. Respondent tested positive for ETG/ETS (alcohol) on or about January 27, 2012.
- 13 k. Respondent's license was suspended on February 2, 2012, based upon his positive
- 14 test for ETG/ETS (alcohol) on January 27, 2012. The suspension was lifted on February 17,
- 15 2012.
- 16 l. Respondent tested positive for ETG/ETS (alcohol) on or about January 29, 2012.
- 17 m. Respondent tested positive for ETG/ETS (alcohol) on or about February 12, 2012.
- 18 n. Respondent tested positive for ETG/ETS (alcohol) on or about February 19, 2012.
- 19 o. Respondent's license was suspended on February 24, 2012, based upon his positive
- 20 test for ETG/ETS (alcohol) on February 19, 2012.
- 21 p. Respondent tested positive for ETG/ETS (alcohol) on or about June 5, 2012.

22 **SECOND CAUSE TO REVOKE PROBATION**

23 **(Failure to Abstain from Alcohol Use)**

24 10. At all times after the effective date of Respondent's probation, Condition 19 stated:

25 **Abstain from Drugs and Alcohol Use** - Respondent shall completely abstain
26 from the possession or use of alcohol, controlled substances, dangerous drugs and
27 their associated paraphernalia except when the drugs are lawfully prescribed by a
28 licensed practitioner as part of a documented medical treatment. Upon request of
the Board or its designee, Respondent shall provide documentation from the
licensed practitioner that the prescription for the drug was legitimately issued and is
a necessary part of the treatment of the Respondent. Failure to timely provide such

1 documentation shall be considered a violation of probation. Respondent shall
2 ensure that he is not in the same physical location as individuals who are using
3 illicit substances even if Respondent is not personally ingesting the drugs. Any
4 possession or use of alcohol, controlled substances, or their associated
5 paraphernalia not supported by the documentation timely provided, and/or any
6 physical proximity to persons using illicit substances, shall be considered a
7 violation of probation.

8 10. Respondent's probation is subject to revocation because he failed to comply with
9 Condition 19, referenced above. The facts and circumstances regarding this violation are as
10 follows:

- 11 a. Respondent tested positive for ETG/ETS (alcohol) on or about September 26,
12 2011.
- 13 b. Respondent tested positive for ETG/ETS (alcohol) on or about January 27, 2012.
- 14 c. Respondent tested positive for ETG/ETS (alcohol) on or about January 29, 2012.
- 15 d. Respondent tested positive for ETG/ETS (alcohol) on or about February 12, 2012.
- 16 e. Respondent tested positive for ETG/ETS (alcohol) on or about February 19, 2012.
- 17 f. Respondent tested positive for ETG/ETS (alcohol) on or about June 5, 2012.

18 THIRD CAUSE TO REVOKE PROBATION

19 (Failure to Commence Community Service)

20 11. At all times after the effective date of Respondent's probation, Condition 20 stated:

21 **Community Services Program** - Within sixty (60) days of the effective date of
22 this Decision, Respondent shall submit to the Board or its designee, for prior
23 approval, a community services program in which Respondent shall provide free
24 health-care related services on a regular basis to a community or charitable facility
25 or agency for at least fifty (50) hours per year for the first two (2) years of
26 probation. Within thirty (30) days of Board approval thereof, Respondent shall
27 submit documentation to the Board demonstrating commencement of the
28 community service program. A record of this notification must be provided to the
Board upon request. Respondent shall report on progress with the community
service program in the quarterly reports. Failure to timely submit, commence, or
comply with the program shall be considered a violation of probation.

12. Respondent's probation is subject to revocation because he failed to comply with
Condition 20, referenced above. The facts and circumstances regarding this violation are as
follows:

1 a. Respondent failed to timely submit to the Board or its designee, a community
2 services program for him to provide health-care related services to a community or charitable
3 facility or agency.

4 b. Respondent failed to timely commence a community service program.

5 PRAYER

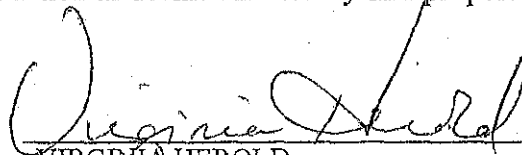
6 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
7 and that following the hearing, the Board of Pharmacy issue a decision:

8 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 3786
9 and imposing the disciplinary order that was stayed thereby revoking Pharmacy Technician
10 License No. TCH 78290 issued to Nou Chai Thao;

11 2. Revoking or suspending Pharmacy Technician License No. TCH 78290 issued to Nou
12 Chai Thao;

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

14
15 DATED: 1/17/13



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

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Exhibit A

Decision and Order

Board of Pharmacy Case No. 4412

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

In the Matter of the Accusation Against:

Case No. 3786

NOU CHAI THAO
P.O. Box 233465
Sacramento, CA 95823

Pharmacy Technician License No. TCH 78290

Respondent.

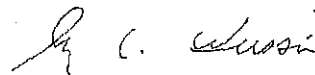
DECISION AND ORDER

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 July 27, 2011.

It is so ORDERED on June 27, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 LESLIE A. BURGERMYER
Deputy Attorney General
4 State Bar No. 117576
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5337
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

10
11 In the Matter of the Accusation Against:

Case No. 3786

12 NOU CHAI THAO
P. O. Box 233465
13 Sacramento, CA 95823

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

14 Pharmacy Technician Registration
15 Number TCH 78290

16 Respondent.

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

21 PARTIES

22 1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy
23 ("Board"), Department of Consumer Affairs. She brought this action solely in her official
24 capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of
25 California, by Leslie A. Burgermyer, Deputy Attorney General.

26 2. Respondent Nou Chai Thao ("Respondent") is representing himself in this proceeding
27 and has chosen not to exercise his right to be represented by counsel.
28

1 9. Respondent agrees that his Pharmacy Technician License is subject to discipline and
2 he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order
3 below.

4 RESERVATION

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

8 CONTINGENCY

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

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

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

1 14. In consideration of the foregoing admissions and stipulations, the parties agree that
2 the Board may, without further notice or formal proceeding, issue and enter the following
3 Disciplinary Order:

4 DISCIPLINARY ORDER

5 IT IS HEREBY ORDERED that Pharmacy Technician License Number TCH 78290
6 issued to Respondent Nou Chai Thao ("Respondent") is REVOKED. However, the revocation is
7 stayed and Respondent is placed on probation for four (4) years on the following terms and
8 conditions.

9 1. Certification Prior to Resuming Work

10 Respondent shall be automatically suspended from working as a pharmacy technician until
11 he or she is certified as defined by Business and Professions Code section 4202(a)(4) and
12 provides satisfactory proof of certification to the Board. Respondent shall not resume working as
13 a pharmacy technician until notified by the Board. Failure to achieve certification within one (1)
14 year shall be considered a violation of probation. Respondent shall not resume working as a
15 pharmacy technician until notified by the Board.

16 During suspension, Respondent shall not enter any pharmacy area or any portion of any
17 other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other
18 devices or controlled substances are maintained. Respondent shall not do any act involving drug
19 selection, selection of stock, manufacturing, compounding or dispensing; nor shall Respondent
20 manage, administer, or assist any licensee of the Board. Respondent shall not have access to or
21 control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled
22 substances. Respondent shall not resume work until notified by the Board.

23 Subject to the above restrictions, Respondent may continue to own or hold an interest in
24 any licensed premises by the Board in which he or she holds an interest at the time this Decision
25 becomes effective unless otherwise specified in this order.

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

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1 2. 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 substances
7 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 pharmacy technician license or which is related to the practice of
13 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any
14 drug, device or controlled substance.

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

16 3. 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 4. 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
28 its designee. Failure to appear for any scheduled interview without prior notification to Board

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

3 5. 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 6. Notice to Employers

8 During the period of probation, Respondent shall notify all present and prospective
9 employers of the Decision in Accusation Number 3786 and the terms, conditions and restrictions
10 imposed 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 Accusation Number 3786 and the terms and
16 conditions imposed thereby. It shall be Respondent's responsibility to ensure that his employer(s)
17 and/or 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 Accusation Number 3786 in advance of the
21 Respondent commencing work at each pharmacy. A record of this notification must be provided
22 to the Board 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
25 employment service, Respondent shall cause his direct supervisor with the pharmacy employment
26 service to report to the Board in writing acknowledging that he has read the Decision in
27 Accusation Number 3786 and the terms and conditions imposed thereby. It shall be Respondent's

28 ///

1 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledg-
2 ment(s) to the Board.

3 Failure to timely notify present or prospective employer(s) or to cause those employer(s) to
4 submit timely acknowledgements to the Board shall be considered a violation of probation.

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

10 7. Reimbursement of Board Costs

11 As a condition precedent to successful completion of probation, Respondent shall pay to the
12 board its costs of investigation and prosecution in the amount of \$1,190.00. Respondent shall
13 make payments as determined by the Board. There shall be no deviation from this schedule
14 absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s)
15 as directed shall be considered a violation of probation.

16 The filing of bankruptcy by Respondent shall not relieve respondent of his responsibility to
17 reimburse the board its costs of investigation and prosecution.

18 8. Probation Monitoring Costs

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

23 9. Status of License

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

27 If Respondent's pharmacy technician license expires or is cancelled by operation of law or
28 otherwise at any time during the period of probation, including any extensions thereof due to

1 tolling or otherwise, upon renewal or reapplication Respondent's license shall be subject to all
2 terms and conditions of this probation not previously satisfied.

3 10. License Surrender While on Probation/Suspension

4 Following the effective date of this Decision, should Respondent cease work due to
5 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
6 respondent may tender his pharmacy technician license to the board for surrender. The Board or
7 its designee shall have the discretion whether to grant the request for surrender or take any other
8 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the
9 license, Respondent will no longer be subject to the terms and conditions of probation. This
10 surrender constitutes a record of discipline and shall become a part of the Respondent's license
11 history with the Board.

12 Upon acceptance of the surrender, Respondent shall relinquish his pharmacy technician
13 license to the Board within ten (10) days of notification by the Board that the surrender is
14 accepted. Respondent may not re-apply for any license, permit, or registration from the Board for
15 three (3) years from the effective date of the surrender. Respondent shall meet all requirements
16 applicable to the license sought as of the date the application for that license is submitted to the
17 board.

18 11. Notification of a Change in Name, Residence Address, Mailing Address or
19 Employment

20 Respondent shall notify the Board in writing within ten (10) days of any change of
21 employment. Said notification shall include the reasons for leaving, the address of the new
22 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
23 shall further notify the Board in writing within ten (10) days of a change in name, residence
24 address and mailing address, or phone number.

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

27 12. Tolling of Probation

28 Except during periods of suspension, respondent shall, at all times while on probation, be

1 employed as a pharmacy technician in California for a minimum of twenty (20) hours per
2 calendar month. Any month during which this minimum is not met shall toll the period of
3 probation, i.e., the period of probation shall be extended by one month for each month during
4 which this minimum is not met. During any such period of tolling of probation, Respondent must
5 nonetheless comply with all terms and conditions of probation.

6 Should Respondent, regardless of residency, for any reason (including vacation) cease
7 working as a pharmacy technician for a minimum of twenty (20) hours per calendar month in
8 California, respondent must notify the board in writing within ten (10) days of cessation of work
9 and must further notify the Board in writing within ten (10) days of the resumption of the work.
10 Any failure to provide such notification(s) shall be considered a violation of probation.

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

14 "Cessation of work" means calendar month during which Respondent is not working
15 for at least twenty (20) hours as a pharmacy technician, as defined in Business and
16 Professions Code section 4115. "Resumption of work" means any calendar month during
17 which respondent is working as a pharmacy technician for at least twenty (20) hours as a
18 pharmacy technician as defined by Business and Professions Code section 4115.

19 13. Violation of Probation

20 If a Respondent has not complied with any term or condition of probation, the Board shall
21 have continuing jurisdiction over Respondent, and probation shall automatically be extended,
22 until all terms and conditions have been satisfied or the Board has taken other action as deemed
23 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
24 to impose the penalty that was stayed.

25 If Respondent violates probation in any respect, the Board, after giving Respondent notice
26 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
27 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
28 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If

1 a petition to revoke probation or an accusation is filed against Respondent during probation, the
2 Board shall have continuing jurisdiction, and the period of probation shall be automatically
3 extended until the petition to revoke probation or accusation is heard and decided.

4 14. Completion of Probation

5 Upon written notice by the Board indicating successful completion of probation,
6 Respondent's pharmacy technician license will be fully restored.

7 15. No Ownership of Licensed Premises

8 Respondent shall not own, have any legal or beneficial interest in, or service as a manager,
9 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
10 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
11 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
12 days following the effective date of this decision and shall immediately thereafter provide written
13 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
14 documentation thereof shall be considered a violation of probation.

15 16. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

16 Within thirty (30) days of the effective date of this Decision, Respondent shall begin
17 regular attendance at a recognized and established substance abuse recovery support group in
18 California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved
19 by the Board or its designee. Respondent must attend at least one (1) group meeting per week
20 unless otherwise directed by the Board or its designee. Respondent shall continue regular
21 attendance and submit signed and dated documentation confirming attendance with each quarterly
22 report for the duration of probation. Failure to attend or submit documentation thereof shall be
23 considered a violation of probation.

24 17. Random Drug Screening

25 Respondent, at his own expense, shall participate in random testing, including but not
26 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
27 screening program as directed by the board or its designee. Respondent may be required to
28 participate in testing for the entire probation period and the frequency of testing will be

1 determined by the board or its designee. At all times Respondent shall fully cooperate with the
2 Board or its designee, and shall, when directed, submit to such tests and samples for the detection
3 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or
4 its designee may direct. Failure to timely submit to testing as directed shall be considered a
5 violation of probation. Upon request of the Board or its designee, Respondent shall provide
6 documentation from a licensed practitioner that the prescription for a detected drug was
7 legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely
8 provide such documentation shall be considered a violation of probation. Any confirmed positive
9 test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a
10 documented medical treatment shall be considered a violation of probation and shall result in the
11 automatic suspension of work by respondent. Respondent may not resume work as a pharmacy
12 technician until notified by the Board in writing.

13 During suspension, respondent shall not enter any pharmacy area or any portion of or any
14 other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other
15 distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and
16 devices or controlled substances are maintained. Respondent shall not do any act involving drug
17 selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent
18 manage, administer, or assist any licensee of the board. Respondent shall not have access to or
19 control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled
20 substances. Respondent shall not resume work until notified by the Board.

21 Respondent shall not direct, control or perform any aspect of the practice of pharmacy.
22 Subject to the above restrictions, Respondent may continue to own or hold an interest in any
23 licensed premises in which he holds an interest at the time this Decision becomes effective unless
24 otherwise specified in this order.

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

26 18. Work Site Monitor

27 Within ten (10) days of the effective date of this Decision, Respondent shall identify a work
28 site monitor, for prior approval by the Board, who shall be responsible for supervising respondent.

1 during working hours. Respondent shall be responsible for ensuring that the work site monitor
2 reports in writing to the Board quarterly. Should the designated work site monitor determine at
3 any time during the probationary period that Respondent has not maintained sobriety, he shall
4 notify the Board immediately, either orally or in writing as directed. Should Respondent change
5 employment, a new work site monitor must be designated, for prior approval by the Board, within
6 ten (10) days of commencing new employment. Failure to identify an acceptable initial or
7 replacement work site monitor, or to ensure quarterly reports are submitted to the Board, shall be
8 considered a violation of probation.

9 **19. Abstain from Drugs and Alcohol Use**

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

21 **20. Community Services Program**

22 Within sixty (60) days of the effective date of this Decision, Respondent shall submit to the
23 Board or its designee, for prior approval, a community services program in which Respondent
24 shall provide free health-care related services on a regular basis to a community or charitable
25 facility or agency for at least fifty (50) hours per year for the first two (2) years of probation.
26 Within thirty (30) days of Board approval thereof, Respondent shall submit documentation to the
27 Board demonstrating commencement of the community service program. A record of this
28 notification must be provided to the Board upon request. Respondent shall report on progress

1 with the community service program in the quarterly reports. Failure to timely submit,
2 commence, or comply with the program shall be considered a violation of probation.

3 ACCEPTANCE

4 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
5 stipulation and the effect it will have on my Pharmacy Technician License Number TCH 78290.
6 I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and
7 intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

8
9 DATED: 4/13/11



10 NOU CHAI THAO
Respondent


11
12 ENDORSEMENT

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

15 DATED: 4/15/11

16 Respectfully submitted,

17 KAMALA D. HARRIS
Attorney General of California
18 ARTHUR D. TAGGART
Supervising Deputy Attorney General

19 
20 LESLIE A. BURGERMYER
21 Deputy Attorney General
Attorneys for Complainant

22
23
24
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Exhibit A

Accusation No. 3786

1 KAMALA D. HARRIS
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2 ARTHUR D. TAGGART
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3 LESLIE A. BURGERMYER
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6 Telephone: (916) 324-5337
Facsimile: (916) 327-8643
7 Attorneys for Complainant

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

10
11 In the Matter of the Accusation Against:

Case No. 3786

12 NOU CHAI THAO
P. O. Box 233465
13 Sacramento, CA 95823

A C C U S A T I O N

14 Pharmacy Technician Registration
Number TCH 78290

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

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

21 2. On or about October 4, 2007, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 78290 to Nou Chai Thao ("Respondent"). The license was in full
23 force and effect at all times relevant to the charges brought herein and will expire on July 31,
24 2011, unless renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board of Pharmacy ("Board") under the
27 authority of the following laws. All section references are to the Business and Professions Code
28 ("Code") unless otherwise indicated.

1 4. Section 4300 of the Code states, in pertinent part:

2 (a) Every license issued may be suspended or revoked.

3 (b) The board shall discipline the holder of any license issued by the
4 board, whose default has been entered or whose case has been heard by the board
and found guilty, by any of the following methods:

5 (1) Suspending judgment.

6 (2) Placing him or her upon probation.

7 (3) Suspending his or her right to practice for a period not exceeding one
8 year.

9 (4) Revoking his or her license.

10 (5) Taking any other action in relation to disciplining him or her as the
board in its discretion may deem proper.

11 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
12 surrender, or cancellation of a license shall not deprive the Board/Registrar/Director of
13 jurisdiction to proceed with a disciplinary action during the period within which the license may
14 be renewed, restored, reissued or reinstated.

15 STATUTORY PROVISIONS

16 6. Section 4301 of the Code states, in pertinent part:

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

20 (1) The conviction of a crime substantially related to the qualifications,
functions, and duties of a licensee under this chapter. The record of conviction of
21 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
States Code regulating controlled substances or of a violation of the statutes of this
22 state regulating controlled substances or dangerous drugs shall be conclusive
evidence of unprofessional conduct. In all other cases, the record of conviction
23 shall be conclusive evidence only of the fact that the conviction occurred. The
board may inquire into the circumstances surrounding the commission of the
24 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
25 is of an offense substantially related to the qualifications, functions, and duties of a
licensee under this chapter. A plea or verdict of guilty or a conviction following a
26 plea of nolo contendere is deemed to be a conviction within the meaning of this
provision. The board may take action when the time for appeal has elapsed, or the
27 judgment of conviction has been affirmed on appeal or when an order granting
probation is made suspending the imposition of sentence, irrespective of a
28 subsequent order under Section 1203.4 of the Penal Code allowing the person to

1 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
2 the verdict of guilty, or dismissing the accusation, information, or indictment.

3 7. Section 490 of the Code states, in pertinent part:

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

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

14 (c) A conviction within the meaning of this section means a plea or verdict
15 of guilty or a conviction following a plea of nolo contendere. Any action that a
16 board is permitted to take following the establishment of a conviction may be taken
17 when the time for appeal has elapsed, or the judgment of conviction has been
18 affirmed on appeal, or when an order granting probation is made suspending the
19 imposition of sentence, irrespective of a subsequent order under the provisions of
20 Section 1203.4 of the Penal Code.

21 COST RECOVERY

22 7. Section 125.3 of the Code states, in pertinent part, that the Board may request the
23 administrative law judge to direct a licentiate found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case.

26 CAUSE FOR DISCIPLINE

27 (Criminal Conviction)

28 8. Respondent is subject to disciplinary action under Code sections 4300, 4301,
29 subdivision (l), and 490 in that on or about January 12, 2010, he was convicted on his plea of nolo
30 contendere in the case titled *People v. Nou Chai Thao*, Sacramento County Superior Court Case
31 No. 09T06548 for violating Vehicle Code section 23152, subdivision (b), [driving a motor
32 vehicle with a blood alcohol content (BAC) of 0.08% or more] and admitted allegations of having
33 a BAC of 0.15% pursuant to Vehicle Code section 23578, a misdemeanor. Said crime is
34 substantially related to the qualifications, functions, and duties of a licensed Pharmacy
35 Technician. The circumstances are as follows:

36 ///

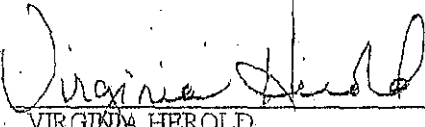
1 a. On or about October 15, 2009, Respondent drove his motor vehicle at a high rate of
2 speed on Northbound Watt Avenue, Sacramento. He was stopped by a law enforcement officer
3 who observed Respondent's objective signs of alcohol intoxication. Respondent unsuccessfully
4 performed three Field Sobriety Tests (FSTs) before he refused to perform further FSTs.
5 Respondent submitted to a blood test which measured .19% BAC.

6 PRAYER

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

- 9 1. Revoking or suspending Pharmacy Technician License Number TCH 78290, issued
10 to Nou Chai Thao;
- 11 2. Ordering Nou Chai Thao to pay the Board of Pharmacy the reasonable costs of the
12 investigation and enforcement of this case, pursuant to Business and Professions Code section
13 125.3; and,
- 14 3. Taking such other and further action as deemed necessary and proper.

15
16 DATED: 1/4/11


17 VIRGINIA HEROLD
18 Executive Officer
19 Board of Pharmacy
20 Department of Consumer Affairs
21 State of California
22 Complainant

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26
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