

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

In the Matter of the Accusation Against:

Case No. 4565

OAH No. 2013070279

SOUVANH THAO aka SOU VANH THAO

9 Rancho Lobo Court
Sacramento, CA 95828

Pharmacy Technician Registration
No. TCH 46227

Respondent.

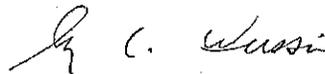
DECISION AND ORDER

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 June 20, 2014.

It is so ORDERED on May 21, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

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CORRECTED PROPOSED DECISION¹

On March 26, 2014, Gloria Megino Ochoa, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Kent D. Harris, Deputy Attorney General, Department of Justice, represented Virginia Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs (complainant).

Respondent, Souvanh Thao, aka Sou Vanh Thao, represented himself.

The hearing concluded on March 26, 2014. The record was kept open until close of business on March 28, 2014, upon applicant's request to submit documentary evidence in the form of letters relating to respondent's character and rehabilitation. On March 28, 2014, respondent submitted 13 letters, which were marked collectively as exhibit A and admitted into evidence as administrative hearsay. Complainant's response to the evidence was received on March 28, 2014 and was marked as exhibit 6. The record was closed and the matter was submitted on March 28, 2014.

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¹ The Administrative Law Judge, on her own motion, issued this Corrected Proposed Decision to correct a typographical error in line 4 of Legal Conclusion 13, highlighted in bold. (Gov. Code, § 11518.5, subdivision (d).)

FACTUAL FINDINGS

1. On March 6, 2003, the Board issued Original Pharmacy Technician Registration Number TCH 46227 to respondent Souvanh Thao. The registration is in effect until April 30, 2014. The Board has not taken any disciplinary action against respondent since the license was originally issued in 2003.

2. Complainant filed the Accusation in her official capacity on June 10, 2013. The Accusation charges that respondent is subject to disciplinary action under Business and Professions Code section 4301, subdivision (l), in that respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a licensee; and that respondent is subject to disciplinary action under Business and Professions Code section 4301, subdivision (f), in that the conduct underlying the conviction demonstrated that respondent committed an act of moral turpitude.

3. Respondent timely filed a Request for Hearing pursuant to Government Code sections 11504 and 11509. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et. seq.

Conviction for Felony Assault with a Deadly Weapon

4. On June 28, 2012, in the Superior Court of the State of California, County of Sacramento, after a jury trial, respondent was convicted of violating section 245, subdivision (a)(1) of the Penal Code (assault with a deadly weapon), a felony, and the lesser included offense under section 242 of the Penal Code (simple battery), a misdemeanor. Respondent was sentenced to serve 210 days in Sacramento County Jail (Sheriff's Work Project) for the felony conviction and a concurrent 90 days in county jail for the misdemeanor conviction. However, upon the recommendation made in the probation report, respondent did not serve his sentence in county jail; he was instead placed under house arrest for 90 days, permitted to leave only to go to work and return home. Respondent was ordered to pay fines and fees totaling \$4,569.78 (which includes fees of \$3,175 for legal services provided by the Public Defender) and \$46 per month for probation supervision. Respondent was also sentenced to 5 years formal probation, which will end in June, 2017 unless terminated earlier.

5. The circumstances surrounding the crime of which respondent was convicted were as follows. On March 12, 2011, respondent and some friends and family members were celebrating a nephew's birthday at a bowling alley in Elk Grove, California. According to the police officers responding to the call for law enforcement, there were several groups fighting when they arrived. One report stated that "[t]here were hundreds of subjects inside yelling, screaming, and attempting to flee towards the exits." Respondent witnessed his brother get hit with a glass drinking cup and fall to the ground. Respondent rushed to his brother and grabbed the person who hit his brother by the collar. When the person (the victim) got away from him, respondent gave chase. Others were also chasing the victim, who was by then trying to flee across the bowling lanes. Respondent chased the victim

across six or seven lanes, when the victim fell, and so did respondent. Respondent saw a bowling ball rolling towards him, picked it up and threw the ball at the victim, who was trying to get up. Another person (respondent's nephew) also threw balls at the victim. Respondent heard screams saying that someone was coming back into the bowling alley with a gun. He got up and picked up another ball which he again threw at the victim. The police officers on site called for an ambulance when the victim "appeared to be going in and out of consciousness." There is no further record of injury to the victim caused by the incident at the bowling alley.

6. At the hearing, respondent appeared quite remorseful, even in tears, and acknowledged, just as he did to the jury, that he was too aggressive in defending his brother, and should not have used bowling balls as weapons to fight the victim. When asked why he continued to chase after the victim after he got the victim to leave his brother alone, respondent replied that he chased after the victim because he (respondent) "did not know what was going on" at the scene. When asked if he thought it was wrong to attack someone when that person was already down on the floor, respondent replied that he agreed it was wrong, but that at the time, he had heard someone yelling that someone was coming back with a gun, and that was when he took the second bowling ball and threw it at the victim. Respondent repeatedly acknowledged he had done wrong, he was too aggressive, and he was sorry for what he had done.

7. Respondent successfully served his county jail sentence through house arrest, with permission to go to and from work daily, for 90 days. He is now on probation, subject to all of the general probation terms and conditions imposed by the court. Although he was not ordered to undertake any training or counseling, respondent sought guidance from the Board but was told there were no programs, classes, or training available for pharmacy technicians (though there were for pharmacists). Respondent stated his willingness to attend "anger management" classes if given the opportunity to maintain his license as a pharmacy technician. No evidence was presented as to whether the fees and fines imposed by the court have been or are being paid. Respondent's probation will last until June 2017, unless earlier terminated by the court.

Factors in Mitigation and Rehabilitation

8. In order to determine whether to grant or discipline a professional license, the finder of fact should consider the conduct of the licensee and any factors introduced in justification, mitigation, aggravation and rehabilitation. "The licensee, of course, should be permitted to introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation." (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449; *Brandt v. Fox* (1979) 90 Cal.App.3d 737, 747.)

9. There were no factors in justification or aggravation presented. There are however factors in mitigation and rehabilitation to be considered. Respondent came to the United States 30 years ago when he was six years old, and has lived in Sacramento for the past 22 years. The sixth of 12 children, respondent married his high school sweetheart at age

21, put her through nursing school by constructing window frames, and when she was finished with school, undertook the training to become a pharmacy technician. He comes from a family that respects education and its potential as a tool for economic advancement, and has two siblings who are social workers and another, a police academy graduate. Married for 14 years, respondent and his wife have twin girls and a baby born in February 2014. Respondent has worked continuously as a pharmacy technician for 11 years and throughout the prosecution of his criminal case, and hopes to continue working in that capacity if allowed to do so. Until the incident that resulted in his criminal convictions, respondent had no police record of any kind.

10. Respondent presented Cher Yang, his wife, as a character witness. Ms. Yang believes that respondent believed he was defending his brother when he attacked the victim at the bowling alley, and that he was carried away "in the heat of the moment" because of his strong ties to his brother. Ms. Yang described respondent's devotion to his work while putting her through nursing school, and his subsequent determination to complete his own training so he may work as a pharmacy technician. She has worked for UC Davis Medical Center for eight years as an oncology nurse, and is currently on maternity leave. Ms. Yang described her husband as a kind, good person, an upstanding citizen who made one big mistake in his life.

11. Copies of numerous letters, written on behalf of respondent and addressed to the judge presiding over his criminal case, were submitted by respondent after the hearing to support his claims of good character, and were considered to the extent permitted by Government Code section 11513, subdivision (d).² While most of the letters were dated in July 2012, there was unanimity in describing respondent as someone who "has never been in trouble with the law," "who knows what is right and wrong," "who works well with others," "is dedicated to his work as well as family," "hardworking, a family man who is community-minded and other-centered." It is clear that all of the letter writers were aware of the criminal conviction, and were in support of a lenient sentence for respondent. One letter spoke to respondent's active involvement in many Hmong community functions and his trustworthiness; another recounted his good sportsmanship, leadership skills, and his dedication as a mentor to many of the younger players on his soccer team. There were a couple of letters from respondent's instructors, who endorsed his skills as a pharmacy technician as well as a person who is reliable, responsible, hardworking, and team oriented. A co-worker who is a licensed pharmacist said that respondent "has always been a full team player: taking on new tasks, proficiently completing all jobs assigned, exhibiting flexibility when staffing shortages arose, and maintaining a professional attitude, attention to detail, and civility to customers and coworkers alike." Finally, respondent submitted a letter from his eldest brother, a social worker at the Sacramento County Department of Health and Human Services, that extolled respondent's role as a leader in the Hmong community as well as a

² Government Code section 11513, subdivision (d) states in pertinent part, "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. ..."

beloved member of their family, and from his brother in law, Cher Yang's brother, who said, "[w]ithout Sou Vanh's support, I know my sister will not be where she is today, a registered nurse and mother of two. Unfortunately, Sou Vanh's supportive nature is also what got him into this situation. He came to the support of his brother who was brutally assaulted. Sou Vanh's actions that occurred after coming to the aid of his brother do not reflect the person I have known for the past 13 years. He is not a violent person, it was a lapse in judgment and one that I know if he had to do again, he would do differently."

Respondent's Scope of Work

12. Complainant presented an expert witness who performs compliance inspections and investigations of criminal convictions of licensees. The witness, a licensed pharmacist since 1981, described the primary duties of a pharmacy technician registrant: order and receive drugs, put away the drugs, check prescriptions, create the labels for the prescribed drugs, and interact with the public in retail pharmacy settings. He stated that registered pharmacy technicians do not interact with the public in hospital settings, nor in skilled nursing facility pharmacies, nor in closed door pharmacies. "Closed door pharmacies" are those where neither patients nor the public go to fill prescriptions, i.e., there is no contact between the pharmacy technicians and the public or the patients. Pharmerica, where respondent has worked for 11 years (since 2003, when he received his license), is a closed door pharmacy.

13. Respondent described his job duties at Pharmerica as involving only data entry: when a prescription is received or called in, respondent types all the information needed on the labels for the medication, while other technicians ready the medication according to the prescription, and yet others actually place the medication into the appropriate container. Respondent does not handle any duties such as ordering or receiving drugs from the company's wholesale suppliers. While at work, respondent does not interact with any member of the public, nor does he handle any medications or drugs. It is not clear from the letters submitted by respondent's co-workers at Pharmerica whether or not his employer has been informed of his criminal convictions. However, respondent has continuously worked at Pharmerica until the present date.

Request for Recovery of Costs

14. Pursuant to Business and Professions Code section 125.3, complainant has requested recovery of the reasonable costs of the investigation and enforcement of this case, which is the total sum of \$1,657.50. At the hearing, the Board's counsel Deputy Attorney General Kent D. Harris introduced a declaration dated March 18, 2014 to which was attached a detailed statement detailing the hours that were spent by various professionals, including Mr. Harris, on enforcement of the case and preparation for the hearing. Respondent did not object to the requested sum, nor did he establish a basis to reduce or eliminate the costs in this matter. In the absence of evidence to the contrary, the claimed costs of \$1,657.50 are found to be reasonable.

LEGAL CONCLUSIONS

Applicable Statutes and Regulations

1. Section 118, subdivision (b) of the Business and Professions Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued, or reinstated. As set forth in Finding 1, Pharmacy Technician Registration No. TCH 46227 expires on April 30, 2014, and is subject to renewal.

2. Business and Professions Code section 4301, subdivisions (f) and (l), state:

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

[¶]...[¶]

(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.

[¶]...[¶]

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances of dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an

order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

3. California Code of Regulations, title 16, section 1770, states that, “[f]or the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.”

Substantially Related Criminal Conviction

4. As set forth in Findings 1 through 6 and Legal Conclusions 1 through 3, respondent’s criminal convictions are substantially related to the qualifications, functions and duties of a pharmacy technician registrant within the meaning of California Code of Regulations, title 16, section 1770, in that the crimes of assault with a deadly weapon and simple battery committed by respondent show, to a substantial degree, his present or potential unfitness to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare. In this case, respondent chased a person across several lanes at a bowling alley and then, after the person fell down, threw bowling balls at him. The potential for grave injury to that person was present, and the fact that the person was not severely injured was simply due to providence. The crimes of which respondent was convicted, by definition, are inconsistent with laws governing the protection of the public health, safety or welfare.

Licenses in the health care industry are required to abide by numerous laws and regulations established to protect the health and safety of the public. This includes abiding by laws that govern the licensee’s activities that may not be directly related to his or her professional license, but could impact the public’s health and safety outside the work environment. Respondent has demonstrated a terrible lapse of judgment in assaulting a person who had already fallen down and was struggling to get up and away from him, and attacking with a bowling ball which could have inflicted deadly force on his victim. A person who commits an act of violence poses a risk to the health, safety and welfare of the public. The act of violence of which respondent was convicted showed a dangerous volatility and a conscious and selfish disregard for the law and the rights of others. (*In re Gossage* (2000) 23 Cal.4th 1080, 1098, citing *In re Nevill* (1985) 39 Cal.3rd 729,735 and *In re Strick* (1987) 43 Cal3rd 644, 653.)

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Acts of Moral Turpitude

5. Under Business and Professions Code section 4301, subdivision (f), cause for suspension or revocation of a pharmacy technician registration due to unprofessional conduct is established if respondent committed an act of “moral turpitude...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.”

In *Jordan v. De George* (1951)341 U.S. 223, the Supreme Court defined “moral turpitude” as conduct so far contrary to the moral law, as interpreted by the general moral sense of the community, that the offender is brought to public disgrace, is no longer generally respected, or is deprived of social recognition by good living persons. Moral turpitude has also been defined as an act which is per se morally reprehensible and intrinsically wrong, or *malum in se*, so it is the nature of the act itself and not the statutory prohibition of it which renders a crime one of moral turpitude. (*Cuevas-Gaspar v. Gonzales*, 430 F.3d 1013, 1018 (9th Cir.2005), also citing *Carr v. INS*, 86 F.3d 949, 950-51 (9th Cir.1996), which notes that assault with a deadly weapon is not necessarily a crime involving moral turpitude.)

In terms of the practice of a profession, a crime of moral turpitude has also been defined as criminal conduct that “involves a serious breach of a duty owed to another or society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the conduct would likely undermine the public confidence in and respect for the profession.” *In re Stuart K. Lesansky* (2001) 25 Cal.4th 11, 16.

The case of *People v. Cavazos* (1985) 172 Cal.App.3d 589 addresses crimes of moral turpitude as they apply to a licensee’s fitness to practice under his or her license. In *Cavazos* the court applied the Supreme Court holdings on assault with a deadly weapon cases to formulate a standard by which to determine an attorney’s fitness to continue his practice. “Simple fairness requires the court to look behind the conviction to ascertain the precise nature of the assault and the circumstances in which it occurred. The bare fact of conviction does not determine the attorney’s fitness to practice.” (*People v. Cavazos*, supra, at p. 595.) In this case, it is appropriate to examine respondent’s fitness to practice his pharmacy technician registration.

6. Respondent’s act of throwing bowling balls at a person who had fallen down is conduct that could subject that person to potentially great bodily harm, thus constituting a breach of a duty owed by respondent to that person. Under Business and Professions Code section 4301, subdivision (f), respondent committed an act of moral turpitude, even though the act was not committed in the course of his work as a pharmacy technician registrant.

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Cause for Discipline

7. As set forth in Findings 1 through 6 and Legal Conclusions 1 through 4, cause for suspension or revocation of respondent's pharmacy technician registration was established by clear and convincing evidence, pursuant to Business and Professions Code section 4301, subdivision (1), in that respondent was convicted of crimes that are substantially related to the qualifications, functions, and duties of a pharmacy technician registrant.

8. As set forth in Findings 1 through 6 and Legal Conclusions 1, 2, 3, 5 and 6, cause for suspension or revocation of respondent's registration as a pharmacy technician was established by clear and convincing evidence, pursuant to Business and Professions Code section 4301, subdivision (f), in that that he has committed an act or acts of moral turpitude.

Disciplinary Considerations

9. California Code of Regulations, title 16, section 1769, subdivision (b) states:

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

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

10. California Code of Regulations, title 16, section 1760, states:

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.) the board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines" (Rev. 10/2007), which are hereby incorporated by reference.

Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board, in its sole discretion, determines that the facts of the particular case warrant such a deviation-the presence of mitigating factors; the age of the case; evidentiary problems.

11. The board's Disciplinary Guidelines list the following factors to be considered in determining penalties:

Section 4300 of the Business and Professions Code provides that the board may discipline the holder of, and suspend or revoke, any certificate, license or permit issued by the board.

In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, factors such as the following should be considered:

1. actual or potential harm to the public
2. actual or potential harm to any consumer
3. prior disciplinary record, including level of compliance with disciplinary order(s)
4. prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
5. number and/or variety of current violations
6. nature and severity of the act(s), offense(s) or crime(s) under consideration
7. aggravating evidence
8. mitigating evidence
9. rehabilitation evidence
10. compliance with terms of any criminal sentence, parole, or probation
11. overall criminal record

12. if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code
13. time passed since the act(s) or offense(s)
14. whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct
15. financial benefit to the respondent from the misconduct.

No single one or combination of the above factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate one.

12. Applying the board's rehabilitation criteria in this matter, it has been a little over three years since the events giving rise to the convictions took place. The violation resulted from a single act of misconduct. In sentencing respondent to 210 days in county jail with a concurrent sentence of 90 days, and then allowing respondent to serve the concurrent sentences by imposing house arrest with work furlough, the court acknowledged respondent's criminal history (showing no record of arrests or convictions whatsoever), the recommendations of the probation report, and the likelihood that respondent poses no risk of harm to the public. Respondent has successfully served his sentence of house arrest with work furlough, and has served almost two years of his five-year formal probation sentence without incident. Respondent's probationary period will end in June, 2017, unless terminated earlier by the court.

13. In mitigation, respondent has repeatedly taken responsibility for his actions, though he had cause to believe that at the time of the incident there could have been further danger to himself or to his brother. Respondent has not been the subject of any prior disciplinary actions or warnings from the board. As set forth in **Finding 5**, the convictions resulted from a single act of misconduct, during a singular incident unlikely to reoccur. As set forth in Findings 8 through 11, respondent is a consistently responsible member of his family and community, as well as an exemplary co-worker. Respondent has continuously worked at Pharmerica, his one and only employer since he was granted a pharmacy technician registration. As set forth in Findings 12 and 13, respondent's duties at his present employment do not entail contact with members of the public or with patients requiring medication.

14. Under all of the circumstances herein, the evidence established that respondent can retain his registration as a pharmacy technician at this time without harm to the public, with appropriate terms and conditions of probation.

15. Respondent indicated during his testimony that he would be willing to take anger management classes, in recognition of his inappropriate and aggressive response to the incident that resulted in his criminal convictions. Under the Disciplinary Guidelines of the Board of Pharmacy applicable to pharmacy technicians, respondent may be ordered to take an anger management training program as remedial training and a condition of probation.

Costs

16. Business and Professions Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. Business and Professions Code section 125.3, subdivision (c), states:

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

Recovery of actual costs of investigation and enforcement of the case is permitted under Business and Professions Code section 125.3.

17. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether the costs should be assessed in the particular circumstances of each case. *Zuckerman* identifies the factors to be considered in determining the reasonableness of costs pursuant to statutory provisions like Business and Professions Code section 125.3. The factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced; the licensee's subjective good faith belief in the merits of his or her position; whether the licensee has raised a colorable challenge to the proposed discipline; the financial ability of the licensee to pay; and whether the scope of the investigation and prosecution was appropriate to the alleged misconduct. In this case, all of the allegations were sustained. As set forth in Finding 14, the costs claimed totaling \$1,657.50 are reasonable, respondent has the ability to pay costs if allowed to retain his registration. Therefore, respondent shall be ordered to pay costs in the amount of \$1,657.50.

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ORDER

Pharmacy Technician Registration No. TCH 46227 issued to respondent Souvanh Thao, aka Sou Vanh Thao is REVOKED pursuant to Legal Conclusions 2 through 8; however the revocation is stayed and respondent is placed on probation for three (3) years upon the following terms and conditions:

1. Suspension of Registration and Certification Prior to Resuming Work

Pharmacy Technician Registration Number TCH 46227 is suspended for a period of 90 days commencing on the effective date of this decision.

Respondent shall be automatically suspended from working as a pharmacy technician until he is certified as defined by Business and Professions Code section 4202, subdivision (a)(4), and provides satisfactory proof of certification to the board. Respondent shall not resume working as a pharmacy technician until notified by the board. Failure to achieve certification within one (1) year shall be considered a violation of probation.

During suspension, respondent shall not enter any pharmacy area or any portion of any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs), any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are 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.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the board 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.

2. Remedial Education

Within thirty (30) days of the effective date of this decision, respondent shall submit to the board or its designee, for prior approval, an appropriate program of remedial education related to anger management. The program of remedial education shall consist of any 52-week program available to criminal defendants in domestic violence cases within the County of Sacramento, which shall be completed at respondent's own expense. The 52-week anger management education program shall be completed within 18 months of the effective date of this decision. All remedial education shall be in addition to, and shall not be credited toward, continuing education (CE) courses used for license renewal purposes.

Failure to timely submit or complete the approved remedial education shall be considered a violation of probation. The period of probation will be automatically extended until such remedial education is successfully completed and written proof, in a form acceptable to the board, is provided to the board or its designee.

3. Compliance with Criminal Probation

Respondent shall fully comply with all of the conditions of probation in Case No. 11F01998 *In the Matter of the People of the State of California v. Sou Vanh Thao*, Sacramento County Superior Court. Any violation of respondent's criminal probation shall be deemed a violation of probation in this licensing matter.

4. Criminal Probation Reports

Respondent shall provide a copy of the conditions of any criminal probation to the board, in writing, within ten (10) days of the issuance or modification of those conditions. Respondent shall provide the name of his or her probation/parole officer to the board, in writing, within ten (10) days after that officer is designated or a replacement for that officer is designated. Respondent shall provide a copy of all criminal probation reports to the board within ten (10) days after respondent receives a copy of such a report. Failure to timely make any of the submissions required hereby shall be considered a violation of probation.

5. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and 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 which involves respondent's pharmacy technician registration or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

6. Report to the Board

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

7. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear at two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

8. Cooperate with Board Staff

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

9. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in OAH case number 2013070279 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in OAH case number 2013070279 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in OAH case number 2013070279 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he has read the decision in OAH case number 2013070279 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

10. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$1,657.50. Respondent shall make said payments according to a schedule as directed by the board or its designee. There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

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

11. Probation Monitoring Costs

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

12. Status of Registration

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

If respondent's pharmacy technician registration expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due

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

13. License Surrender While on Probation/Suspension

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

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

14. Notification of a Change in Name, Residence Address, Mailing Address or Employment

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

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

15. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 40 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 40 hours per calendar month in California, respondent must notify the board in writing within ten (10) days of cessation of

work and must further notify the board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

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

"Cessation of work" means calendar month during which respondent is not working for at least 40 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least 40 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

16. Violation of Probation

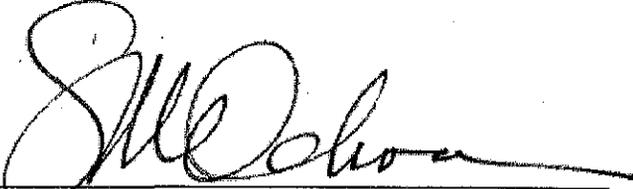
If a respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat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

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

17. Completion of Probation

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

Dated: April 25, 2014



GLORIA MEGINO OCHOA
Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 4565

13 **SOUVANH THAO aka SOU VANH THAO**
6993 Mesa Grande
Sacramento, CA 95828

ACCUSATION

14 Pharmacy Technician Registration No. TCH 46227

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 March 6, 2003, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 46227 to Souvanh Thao (Respondent). The Registration will expire
23 on April 30, 2014, unless renewed.

24 **JURISDICTION**

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

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

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

....

(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.

....

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

....

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

COST RECOVERY

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

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1 FIRST CAUSE FOR DISCIPLINE

2 **(Criminal Conviction)**

3 7. Respondent is subject to disciplinary action under section 4301, subdivision (l) in that
4 she was convicted of a crime substantially related to the qualifications, functions, and duties of a
5 licensee. The circumstances are as follows:

6 8. On or about June 28, 2012, in a criminal proceeding entitled *People v. Sou Vanh Thao*
7 in Sacramento County Superior Court, Case Number 11F01998, Respondent was convicted by a
8 jury trial verdict of a felony violation of Penal Code section 245(a)(1) (assault with a deadly
9 weapon) and a misdemeanor violation of Penal Code section 242 (simple battery). Respondent
10 was sentenced to 210 days of county jail, followed by 5 years of formal probation. The
11 circumstances are as follows:

12 9. On or about March 12, 2011, Elk Grove police officers were dispatched to a physical
13 disturbance at Strikes Bowling Alley in Elk Grove. Upon arrival, officers saw multiple subjects
14 fleeing from the interior of Strikes Bowling alley, and inside there were hundreds of subjects
15 yelling, screaming and attempting to flee toward the exits. The officers located the victim, who
16 appeared to be going in and out of consciousness. While he was being treated, the victim vomited
17 twice and officers advised that they observed contusions on his head and that part of his ear was
18 ripped off where he was wearing earrings. A witness approached the officers and stated that
19 about 12 male subjects beat up the victim, and that the witness saw Respondent and one other
20 male pick up two bowling balls each and throw them onto the victim's head while he was on the
21 ground.

22 SECOND CAUSE FOR DISCIPLINE

23 **(Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

24 10. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
25 that he committed an act of moral turpitude, dishonesty, fraud, deceit, or corruption as set forth in
26 paragraphs 8 and 9, and herein incorporated by reference.

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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:

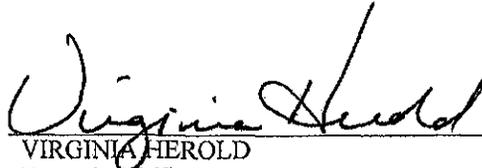
1. Revoking or suspending Pharmacy Technician Registration Number TCH 46227, issued to Souvanh Thao;

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

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

DATED:

6/10/13



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