

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

In the Matter of the Statement of Issues Against:

Case No. 5472

VIET DU LE

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

Pharmacist License Applicant

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 at 5:00 p.m. on April 1, 2016.

It is so ORDERED March 2, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 ANTOINETTE B. CINCOTTA
Deputy Attorney General
4 State Bar No. 120482
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2095
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Statement of Issues Against:

Case No. 5472

13 **VIET DU LE**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 **Pharmacist License Applicant**

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

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

24 2. Respondent Viet Du Le (Respondent) is representing himself in this proceeding and
25 has chosen not to exercise his right to be represented by counsel.

26 3. On or about June 25, 2014, Respondent filed an application dated June 20, 2014, with
27 the Board of Pharmacy to obtain a Pharmacist License. The Board denied the application on
28 March 1, 2015.

1
2
3
4
5
6
7

JURISDICTION

8 4. Statement of Issues No. 5472 was filed before the Board, and is currently pending
9 against Respondent. The Statement of Issues and all other statutorily required documents were
10 properly served on Respondent on September 17, 2015.

11 5. A copy of Statement of Issues No. 5472 is attached as Exhibit A, and incorporated
12 herein by reference.

13
14
15

ADVISEMENT AND WAIVERS

16 6. Respondent has carefully read, and understands the charges and allegations in
17 Statement of Issues No. 5472. Respondent has also carefully read, and understands the effects of
18 this Stipulated Settlement and Disciplinary Order.

19 7. Respondent is fully aware of his legal rights in this matter, including the right to a
20 hearing on the charges and allegations in the Statement of Issues; the right to be represented by
21 counsel at his own expense; the right to confront and cross-examine the witnesses against him;
22 the right to present evidence and to testify on his own behalf; the right to the issuance of
23 subpoenas to compel the attendance of witnesses and the production of documents; the right to
24 reconsideration and court review of an adverse decision; and all other rights accorded by the
25 California Administrative Procedure Act and other applicable laws.

26 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
27 every right set forth above.

28

CULPABILITY

 9. Respondent admits the truth of each and every charge and allegation in Statement of
Issues No. 5472.

 10. Respondent agrees that his Pharmacist License is subject to denial and he agrees to be
bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

 11. This stipulation shall be subject to approval by the Board. Respondent understands
and agrees that counsel for Complainant and the staff of the Board may communicate directly
with the Board regarding this stipulation and settlement, without notice to or participation by

1 Respondent. By signing the stipulation, Respondent understands and agrees that he may not
2 withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers
3 and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the
4 Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this
5 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
6 be disqualified from further action by having considered this matter.

7 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
8 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
9 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

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

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

19 **DISCIPLINARY ORDER**

20 IT IS HEREBY ORDERED that the application of Respondent Viet Du Le for a Pharmacist
21 License is hereby granted, and upon successful completion of all licensing requirements,
22 Respondent shall be issued a Pharmacist License. However, the Pharmacist License shall be
23 immediately revoked, the revocation stayed, and Respondent shall be placed on probation for a
24 period of five (5) years under the following terms and conditions:

25 **1. Pharmacists Recovery Program (PRP)**

26 Within thirty (30) days of the effective date of this decision, Respondent shall contact the
27 Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll,
28 successfully participate in, and complete the treatment contract and any subsequent addendums as

1 recommended and provided by the PRP and as approved by the Board or its designee. The costs
2 for PRP participation shall be borne by Respondent.

3 Respondent's Pharmacist License shall be suspended until he is deemed safe to practice by
4 the PRP.

5 If Respondent is currently enrolled in the PRP, said participation is now mandatory and as
6 of the effective date of this decision is no longer considered a self-referral under Business and
7 Professions Code section 4362(c)(2). Respondent shall successfully participate in and complete
8 his current contract and any subsequent addendums with the PRP.

9 Failure to timely contact or enroll in the PRP, or successfully participate in and complete
10 the treatment contract and/or any addendums, shall be considered a violation of probation.

11 Probation shall be automatically extended until Respondent successfully completes the
12 PRP. Any person terminated from the PRP program shall be automatically suspended by the
13 Board. Respondent may not resume the practice of pharmacy until notified by the Board in
14 writing.

15 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a
16 licensed practitioner as part of a documented medical treatment shall result in the automatic
17 suspension of practice by Respondent, and shall be considered a violation of probation.

18 Respondent may not resume the practice of pharmacy until notified by the Board in writing.

19 During suspension, Respondent shall not enter any pharmacy area or any portion of the
20 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
21 drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices
22 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
23 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
24 consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the
25 Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
26 and controlled substances. Respondent shall not resume practice until notified by the Board.

27 During suspension, Respondent shall not engage in any activity that requires the
28 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the

1 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
2 designated representative for any entity licensed by the Board.

3 Subject to the above restrictions, Respondent may continue to own or hold an interest in
4 any licensed premises in which he holds an interest at the time this Decision and Order becomes
5 effective, unless otherwise specified in this Order.

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

7 Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not
8 timely paid to the PRP shall constitute a violation for probation. The Board will collect unpaid
9 administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

10 **2. Obey All Laws**

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

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

- 14 • an arrest or issuance of a criminal complaint for violation of any provision of the
15 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
16 substances laws
- 17 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
18 criminal complaint, information or indictment
- 19 • a conviction of any crime
- 20 • discipline, citation, or other administrative action filed by any state or federal agency
21 which involves Respondent's Pharmacist license or which is related to the practice of
22 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging
23 for any drug, device or controlled substance.

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

25 **3. Report to the Board**

26 Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its
27 designee. The report shall be made either in person or in writing, as directed. Among other
28 requirements, Respondent shall state in each report under penalty of perjury whether there has

1 been compliance with all the terms and conditions of probation. Failure to submit timely reports
2 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
3 in submission of reports as directed may be added to the total period of probation. Moreover, if
4 the final probation report is not made as directed, probation shall be automatically extended until
5 such time as the final report is made and accepted by the Board.

6 **4. Interview with the Board**

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

12 **5. Cooperate with Board Staff**

13 Respondent shall cooperate with the Board's inspection program and with the Board's
14 monitoring and investigation of Respondent's compliance with the terms and conditions of his
15 probation. Failure to cooperate shall be considered a violation of probation.

16 **6. Continuing Education**

17 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
18 pharmacist as directed by the Board or its designee.

19 **7. Notice to Employers**

20 During the period of probation, Respondent shall notify all present and prospective
21 employers of the decision in case number 5472 and the terms, conditions and restrictions imposed
22 on Respondent by the decision, as follows:

23 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
24 Respondent undertaking any new employment, Respondent shall cause his direct supervisor,
25 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
26 tenure of employment) and owner to report to the Board in writing acknowledging that the listed
27 individual(s) has/have read the Decision and Order in Case No. 5472, and terms and conditions

28 ///

1 imposed thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or
2 supervisor(s) submit timely acknowledgment(s) to the Board.

3 If Respondent works for or is employed by or through a pharmacy employment service,
4 Respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
5 licensed by the Board of the terms and conditions of the Decision and Order in Case No. 5472 in
6 advance of Respondent commencing work at each licensed entity. A record of this notification
7 must be provided to the Board upon request.

8 Furthermore, within thirty (30) days of the effective date of this Decision and Order, and
9 within fifteen (15) days of Respondent undertaking any new employment by or through a
10 pharmacy employment service, Respondent shall cause his direct supervisor with the pharmacy
11 employment service to report to the Board in writing acknowledging that he has read the Decision
12 and Order in Case No. 5472, and the terms and conditions imposed thereby. It shall be
13 Respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely
14 acknowledgment(s) to the Board.

15 Failure to timely notify present or prospective employer(s) or to cause that/those
16 employer(s) to submit timely acknowledgments to the Board shall be considered a violation of
17 probation.

18 "Employment" within the meaning of this provision shall include any full-time,
19 part-time, temporary, relief or pharmacy management service as a pharmacist or any
20 position for which a pharmacist license is a requirement or criterion for employment,
21 whether the Respondent is an employee, independent contractor or volunteer.

22 **8. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
23 **Designated Representative-in-Charge, or Serving as a Consultant**

24 During the period of probation, Respondent shall not supervise any intern pharmacist, be
25 the pharmacist-in-charge or designated representative-in-charge of any entity licensed by the
26 Board nor serve as a consultant unless otherwise specified in this order. Assumption of any such
27 unauthorized supervision responsibilities shall be considered a violation of probation.

28 ///

1 **9. Reimbursement of Board Costs**

2 As a condition precedent to successful completion of probation, Respondent shall pay to the
3 Board its costs of investigation and prosecution in Accusation Case No. 5471 in the amount of
4 \$987.50. Respondent shall make said payments in ten (10) monthly payments of \$98.75
5 beginning the effective date of this Decision and Order.

6 There shall be no deviation from this schedule absent prior written approval by the Board or
7 its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of
8 probation.

9 The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to
10 reimburse the Board its costs of investigation and prosecution.

11 **10. Probation Monitoring Costs**

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

16 **11. Status of License**

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

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

24 **12. License Surrender While on Probation/Suspension**

25 Following the effective date of this decision, should Respondent cease practice due to
26 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
27 Respondent may tender his license to the Board for surrender. The Board or its designee shall
28 have the discretion whether to grant the request for surrender or take any other action it deems

1 appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent
2 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
3 record of discipline and shall become a part of the Respondent's license history with the Board.

4 Upon acceptance of the surrender, Respondent shall relinquish his pocket and wall license
5 to the Board within ten (10) days of notification by the Board that the surrender is accepted.
6 Respondent may not reapply for any license from the Board for three (3) years from the effective
7 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
8 of the date the application for that license is submitted to the Board, including any outstanding
9 costs.

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

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

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

19 **14. Tolling of Probation**

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

26 Should Respondent, regardless of residency, for any reason (including vacation) cease
27 practicing as a pharmacist for a minimum of 40 hours per calendar month in California,
28 Respondent must notify the Board in writing within ten (10) days of the cessation of practice, and

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

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

6 "Cessation of practice" means any calendar month during which Respondent is not
7 practicing as a pharmacist for at least 40 hours, as defined by Business and Professions Code
8 section 4000 et seq .

9 "Resumption of practice" means any calendar month during which Respondent is practicing
10 as a pharmacist for at least 40 hours as a pharmacist as defined by Business and Professions Code
11 section 4000 et seq.

12 15. **Violation of Probation**

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

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

25 16. **Completion of Probation**

26 Upon written notice by the Board or its designee indicating successful completion of .
27 probation, Respondent's license will be fully restored.

28 ///

1 **17. Random Drug Screening**

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

18 During suspension, Respondent shall not enter any pharmacy area or any portion of the
19 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
20 drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices
21 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
22 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
23 consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the
24 Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
25 and controlled substances. Respondent shall not resume practice until notified by the Board.

26 During suspension. Respondent shall not engage in any activity that requires the
27 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the

28 ///

1 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
2 designated representative for any entity licensed by the Board.

3 Subject to the above restrictions, Respondent may continue to own or hold an interest in
4 any licensed premises in which he holds an interest at the time this decision becomes effective
5 unless otherwise specified in this order.

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

7 **18. Abstain from Drugs and Alcohol Use**

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

19 **19. Prescription Coordination and Monitoring of Prescription Use**

20 Within thirty (30) days of the effective date of this decision, Respondent shall submit to the
21 Board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
22 physician assistant, or psychiatrist of Respondent's choice, who shall be aware of the
23 Respondent's history with the use of alcohol and alcohol-related criminal convictions, and who
24 will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled
25 substances or mood-altering drugs. The approved practitioner shall be provided with a copy of
26 the Board's Statement of Issues and decision. A record of this notification must be provided to
27 the Board upon request. Respondent shall sign a release authorizing the practitioner to
28 communicate with the Board about Respondent's treatment(s). The coordinating physician, nurse

1 practitioner, physician assistant, or psychiatrist shall report to the Board on a quarterly basis for
2 the duration of probation regarding Respondent's compliance with this condition. If any
3 substances considered addictive have been prescribed, the report shall identify a program for the
4 time limited use of any such substances. The Board may require that the single coordinating
5 physician, nurse practitioner, physician assistant or psychiatrist be a specialist in addictive
6 medicine, or consult a specialist in addictive medicine. Should Respondent, for any reason, cease
7 supervision by the approved practitioner, Respondent shall notify the Board immediately and,
8 within thirty (30) days of ceasing treatment, submit the name of a replacement physician, nurse
9 practitioner, physician assistant, or psychiatrist of Respondent's choice to the Board or its
10 designee for its prior approval. Failure to timely submit the selected practitioner or replacement
11 practitioner to the Board for approval, or to ensure the required reporting thereby on the quarterly
12 reports, shall be considered a violation of probation.

13 If at any time an approved practitioner determines that Respondent is unable to practice
14 safely or independently as a pharmacist, the practitioner shall notify the Board immediately by
15 telephone and follow up by written letter within three (3) working days. Upon notification from
16 the Board or its designee of this determination, Respondent shall be automatically suspended and
17 shall not resume practice until notified by the Board that practice may be resumed.

18 During suspension, Respondent shall not enter any pharmacy area or any portion of the
19 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
20 drugs which is licensed by the Board, or any manufacturer, or where dangerous drugs and devices
21 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
22 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
23 consultation; nor shall Respondent manage, administer, or be a consultant to any licensee of the
24 Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
25 and controlled substances. Respondent shall not resume practice until notified by the Board.

26 During suspension, Respondent shall not engage in any activity that requires the
27 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
28 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a

1 designated representative for any entity licensed by the Board.

2 Subject to the above restrictions, Respondent may continue to own or hold an interest in
3 any licensed premises in which he holds an interest at the time this decision becomes effective
4 unless otherwise specified in this order.

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

6 **20. Community Services Program**

7 Within sixty (60) days of the effective date of this decision, Respondent shall submit to the
8 Board or its designee, for prior approval, a community service program in which Respondent
9 shall provide free health-care related services on a regular basis to a community or charitable
10 facility or agency for at least 40 hours per year for each the five (5) years of probation. Within
11 thirty (30) days of Board approval thereof, Respondent shall submit documentation to the Board
12 demonstrating commencement of the community service program. A record of this notification
13 must be provided to the Board upon request. Respondent shall report on progress with the
14 community service program in the quarterly reports. Failure to timely submit, commence, or
15 comply with the program shall be considered a violation of probation.

16 **21. Remedial Education**

17 Within ninety (90) days of the effective date of this decision, Respondent shall submit to
18 the Board or its designee, for prior approval, an appropriate program of remedial education
19 related to alcohol awareness and interactions with medications, and addiction. The program of
20 remedial education shall consist of at least 10 hours per year for each of the first three (3) years of
21 probation, which shall be completed at Respondent's own expense. All remedial education shall
22 be in addition to, and shall not be credited toward, continuing education (CE) courses used for
23 license renewal purposes.

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

28 ///

1 Following the completion of each course, the Board or its designee may require the
2 Respondent, at his own expense, to take an approved examination to test the Respondent's
3 knowledge of the course. If the Respondent does not achieve a passing score on the examination,
4 this failure shall be considered a violation of probation. Any such examination failure shall
5 require Respondent to take another course approved by the Board in the same subject area.

6 **22. Supervised Practice**

7 During the period of probation, respondent shall practice only under the supervision of a
8 licensed pharmacist not on probation with the board. Upon and after the effective date of this
9 decision, respondent shall not practice pharmacy and his or her license shall be automatically
10 suspended until a supervisor is approved by the board or its designee. The supervision shall be, as
11 required by the board or its designee, either:

12 Continuous – At least 75% of a work week

13 Substantial - At least 50% of a work week

14 Partial - At least 25% of a work week

15 Daily Review - Supervisor's review of probationer's daily activities within 24 hours

16 Within thirty (30) days of the effective date of this decision, respondent shall have his or
17 her supervisor submit notification to the board in writing stating that the supervisor has read the
18 Decision and Order in Case No. 5472, and is familiar with the required level of supervision as
19 determined by the board or its designee. It shall be the respondent's responsibility to ensure that
20 his or her employer(s), pharmacist-in-charge and/or supervisor(s) submit timely
21 acknowledgement(s) to the board. Failure to cause the direct supervisor and the pharmacist-in-
22 charge to submit timely acknowledgements to the board shall be considered a violation of
23 probation.

24 If respondent changes employment, it shall be the respondent's responsibility to ensure that
25 his or her employer(s), pharmacist-in-charge and/or supervisor(s) submit timely
26 acknowledgement(s) to the board. Respondent shall have his or her new supervisor, within fifteen
27 (15) days after employment commences, submit notification to the board in writing stating the
28 direct supervisor and pharmacist-in-charge have read the Decision and Order in Case No. 5472,

1 and is familiar with the level of supervision as determined by the board. Respondent shall not
2 practice pharmacy and his or her license shall be automatically suspended until the board or its
3 designee approves a new supervisor. Failure to cause the direct supervisor and the pharmacist-in-
4 charge to submit timely acknowledgements to the board shall be considered a violation of
5 probation.

6 Within ten (10) days of leaving employment, respondent shall notify the board in writing.

7 During suspension, respondent shall not enter any pharmacy area or any portion of the
8 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
9 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
10 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
11 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
12 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
13 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
14 and controlled substances. Respondent shall not resume practice until notified by the board.

15 During suspension, respondent shall not engage in any activity that requires the
16 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
17 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
18 designated representative for any entity licensed by the board.

19 Subject to the above restrictions, respondent may continue to own or hold an interest in any
20 licensed premises in which he or she holds an interest at the time this decision becomes effective
21 unless otherwise specified in this order.

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

23 **23. No Ownership of Licensed Premises**

24 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
25 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
26 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell or
27 transfer any legal or beneficial interest in any entity licensed by the board within ninety (90) days
28 following the effective date of this decision and shall immediately thereafter provide written

1 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
2 documentation thereof shall be considered a violation of probation.

3 **24. Criminal Probation/Parole Reports**

4 Respondent shall provide a copy of the conditions of any criminal probation/parole to the
5 Board, in writing, within ten (10) days of the issuance or modification of those conditions.

6 Respondent shall provide the name of his probation/parole officer to the Board, in writing, within
7 ten (10) days after that officer is designated or a replacement for that officer is designated.

8 Respondent shall provide a copy of all criminal probation/parole reports to the Board within ten
9 (10) days after Respondent receives a copy of such a report. Failure to timely make any of the
10 submissions required hereby shall be considered a violation of probation.

11 **25. Ethics Course**

12 Within sixty (60) calendar days of the effective date of this decision, Respondent shall
13 enroll in a course in ethics, at Respondent's expense, approved in advance by the Board or its
14 designee. Failure to initiate the course during the first year of probation, and complete it within
15 the second year of probation, is a violation of probation.

16 Respondent shall submit a certificate of completion to the Board or its designee within five
17 days after completing the course.

18 ACCEPTANCE

19 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
20 stipulation and the effect it will have on my Pharmacist License. I enter into this Stipulated
21 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
22 bound by the Decision and Order of the Board of Pharmacy.

23
24 DATED: 10/21/15 
25 VIET DU LE
Respondent

26 ///
27 ///
28 ///

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

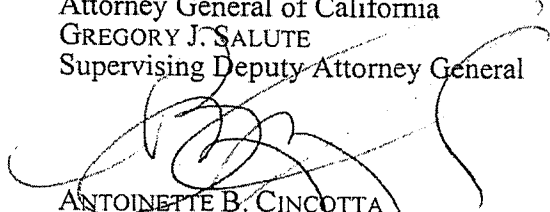
ENDORSEMENT

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

Dated: 10/21/2015

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General



ANTOINETTE B. CINCOTTA
Deputy Attorney General
Attorneys for Complainant

SD2015801057
81172301.doc

Exhibit A

Statement of Issues No. 5472

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

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

12 In the Matter of the Statement of Issues Against:

Case No. 5472

13 **VIET DU LE**

STATEMENT OF ISSUES

14 **Pharmacist License Applicant**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

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

27 ///

28 ///

1 **JURISDICTION**

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

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

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

7 **STATUTORY PROVISIONS**

8 5. Section 475 of the Code states:

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

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

13 (2) Conviction of a crime.

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

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

20 6. Section 480 of the Code states:

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

23 (1) Been convicted of a crime. A conviction within the meaning of
24 this section means a plea or verdict of guilty or a conviction following a plea of
25 *nolo contendere*. Any action that a board is permitted to take following the
26 establishment of a conviction may be taken when the time for appeal has elapsed,
27 or the judgment of conviction has been affirmed on appeal, or when an order
28 granting probation is made suspending the imposition of sentence, irrespective of
a subsequent order under the provisions of section 1203.4 of the Penal Code.

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

///

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

7. Section 482 of the Code states:

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

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

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

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

9. Section 4301 of the Code states:

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

....

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

....

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

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with section 801) of Title 21 of the United

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

11

12 REGULATORY PROVISIONS

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

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

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

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

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

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

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

.....

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

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

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

4 **FIRST CAUSE FOR DENIAL OF APPLICATION**

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

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

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

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

28 ///

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

11 **SECOND CAUSE FOR DENIAL OF APPLICATION**

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

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

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

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

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

13 **THIRD CAUSE FOR DENIAL OF APPLICATION**

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

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

21 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

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

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

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

PRAYER

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

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

DATED: 9/5/15 

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

SD2015801057
81099829.doc