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

In the Matter of the Petition to Revoke
Probation Against:

DAVID LEE HUYNH
6251 Lena
Woodland Hills, CA 91367
Pharmacist License No. RPH 52876

Respondent.

Case No. 5780

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about April 14, 2016, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Petition to Revoke Probation No. 5780 against David Lee Huynh (Respondent) before the Board of Pharmacy. (Petition to Revoke Probation attached as Exhibit A.)
2. On or about September 5, 2001, the Board of Pharmacy (Board) issued Pharmacist License No. RPH 52876 to Respondent. The Pharmacist License was suspended on November 9, 2015, will expire on October 31, 2016, if not renewed.

1 3. On or about May 3, 2016, Respondent was served with copies of the Petition to
2 Revoke Probation No. 5780, Statement to Respondent, Notice of Defense, Request for Discovery,
3 and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) by Certified
4 Mail and First Class Mail at Respondent's address of record which, pursuant to Business and
5 Professions Code section 4100, is required to be reported and maintained with the Board.
6 Respondent's address of record was and is 6251 Lena, Woodland Hills, CA 91367.

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

10 5. On or about May 5, 2015, the Domestic Return Receipt of the Certified Mail was
11 signed by “[illegible] Hong Huynh” and returned to the Office of the Attorney General.

12 6. Government Code section 11506(c) states, in pertinent part:

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

18 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
19 of the Petition to Revoke Probation, and therefore waived his right to a hearing on the merits of
20 Petition to Revoke Probation No. 5780.

21 8. California Government Code section 11520(a) states, in pertinent part:

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

26 9. Pursuant to its authority under Government Code section 11520, the Board finds
27 Respondent is in default. The Board will take action without further hearing and, based on the
28 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits, and statements contained therein on
file at the Board's offices regarding the allegations contained in Petition to Revoke Probation No.

1 5780, finds that the charges and allegations in Petition to Revoke Probation No. 5780, are
2 separately and severally, true and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
5 and Enforcement are \$3,077.50 as of June 22, 2016.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent David Lee Huynh has subjected
8 his Pharmacist License No. RPH 52876 to discipline.

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

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

13 a. Respondent failed to enroll in the Pharmacist Recovery Program as required by
14 Condition 1 of Respondent's probation.

15 b. Respondent failed to report to the Board as required by Condition 4 of Respondent's
16 probation.

17 c. Respondent failed to appear for interviews with the Board as required by Condition 5
18 of Respondent's probation.

19 d. Respondent failed to submit the name of a board-approved licensed mental health
20 practitioner and undergo psychiatric evaluation as required by Condition 9 of Respondent's
21 probation.

22 e. Respondent failed to submit the name and qualifications of a licensed mental health
23 practitioner and failed to provide documentation establishing he had commenced psychotherapy
24 with the licensed mental health practitioner as required by Condition 10 of Respondent's
25 probation.

26 f. Respondent failed to undergo a medical evaluation by a Board-appointed or Board-
27 approved physician as Required by Condition 11 of Respondent's probation.

28

1 g. Respondent failed to participate in random biological fluid testing, breathalyzer, hair
2 follicle testing, or other drug screening program as Required by Condition 12 of Respondent's
3 probation.

4 h. Respondent failed to submit to the Board the name and qualifications of a single
5 physician, nurse practitioner, physician assistant, or psychiatrist to coordinate and monitor
6 Respondent's prescriptions for dangerous drugs, controlled substances, or mood-altering drugs as
7 required by Condition 14 of Respondent's probation.

8 i. Respondent failed to provide the Board with probation and/or parole reports as
9 required by Condition 18 of Respondent's probation.

10 j. Respondent failed to pay the Board its investigation and prosecution costs in the
11 amount of \$2,780.00 as required by Condition 20 of Respondent's probation.

12 ORDER


13 IT IS SO ORDERED that Pharmacist License No. RPH 52876, heretofore issued to
14 Respondent David Lee Huynh, is revoked.

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

19 This Decision shall become effective at 5:00 p.m. on September 9, 2016.

20 It is so ORDERED on August 10, 2016.

21
22 BOARD OF PHARMACY
23 DEPARTMENT OF CONSUMER AFFAIRS
24 STATE OF CALIFORNIA

25 

26
27 By _____
28 Amy Gutierrez, Pharm.D.
Board President

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DOJ Matter ID:LA2016600894

**Attachment:
Exhibit A: Petition to Revoke Probation**

Exhibit A

Petition to Revoke Probation

(DAVID LEE HUYNH)

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS L. RINALDI
Supervising Deputy Attorney General
3 MORGAN W. MCCALL
Deputy Attorney General
4 State Bar No. 240258
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2544
6 Facsimile: (213) 897-2804
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Petition to Revoke
11 Probation Against,

Case No. 5780

12 **DAVID LEE HUYNH**
13 **6251 Lena**
Woodland Hills, CA 91367
14 **Pharmacist License No. RPH 52876**

PETITION TO REVOKE PROBATION

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about September 5, 2001, the Board of Pharmacy issued Pharmacist License
23 Number RPH 52876 to David Lee Huynh (Respondent). The Pharmacist License will expire on
24 October 31, 2016, if not renewed.

25 3. In a disciplinary action entitled "In the Matter of Accusation Against David Lee
26 Huynh," Case No. 4587, the Board of Pharmacy issued a decision, effective November 9, 2015,
27 in which Respondent's Pharmacist License was revoked. The revocation was stayed, however,
28 and Respondent's Pharmacist License was placed on probation for a period of five (5) years with

1 certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated
2 by reference.

3 JURISDICTION

4 4. This Petition to Revoke Probation is brought before the Board of Pharmacy (Board),
5 Department of Consumer Affairs, under Condition 26 of the Decision and Order In the Matter of
6 Accusation Against David Huynh, Case No. 4587. That Condition states as follows:

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

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

19 FIRST CAUSE TO REVOKE PROBATION

20 **(Pharmacist Recovery Program)**

21 5. At all times after the effective date of Respondent's probation, Condition 1 stated:

22 "Commencing on the effective date of this decision, Respondent shall not engage in the
23 practice of pharmacy until after he has enrolled in the Pharmacists Recovery Program ["PRP"],
24 completed an intake and evaluation assessment by the PRP, and has been notified in writing by
25 the Board that he has been deemed to practice pharmacy safely. After he has been deemed fit to
26 practice pharmacy by the PRP, at all times Respondent shall successfully participate in, and
27 complete the treatment contract and any subsequent addendums as recommended and provided by
28 the PRP and as approved by the Board or its designee for the duration of the probation period.

1 The costs for PRP participation shall be borne by the respondent.

2
3 “Failure to timely contact or enroll in the PRP, or successfully participate in and complete
4 the treatment contract and/or any addendums, shall be considered a violation of probation. . . .”

5 6. Respondent’s probation is subject to revocation because he failed to comply with
6 Condition 1, referenced above. The facts and circumstances regarding this violation are that on or
7 about February 1, 2016, the administrative vendor for the PRP sent a letter to the Board stating
8 Respondent failed to contact them and enroll in the PRP.

9 **SECOND CAUSE TO REVOKE PROBATION**

10 **(Report to the Board)**

11 7. At all times after the effective date of Respondent’s probation, Condition 4 stated:

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

20 8. Respondent’s probation is subject to revocation because he failed to comply with
21 Condition 4, referenced above. The facts and circumstances regarding this violation are as
22 follows:

23 A. On or about November 4, 2015, the Board sent Respondent a letter directing him to
24 attend an office conference on November 20, 2015, to review the terms and conditions of
25 probation. Respondent failed to appear.

26 B. On or about February 2, 2016, the Board sent Respondent a non-compliance letter
27 and further instructed Respondent to submit a comprehensive quarterly report by February 12,
28 2016. Respondent failed to submit his report.

1 **THIRD CAUSE TO REVOKE PROBATION**

2 **(Interview with the Board)**

3 9. At all times after the effective date of Respondent's probation, Condition 5 stated:

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

9 10. Respondent's probation is subject to revocation because he failed to comply with
10 Condition 5, referenced above. The facts and circumstances regarding this violation are as
11 follows:

12 A. On or about November 4, 2015, the Board sent Respondent a letter informing him he
13 was required to report in person at an office conference on November 20, 2015, to review the
14 terms and conditions of his probation. Respondent failed to respond or appear on November 20,
15 2015.

16 B. On or about December 1, 2015, the Board sent Respondent a second letter notifying
17 Respondent he was required to report in person to the Board at a office conference on December
18 11, 2015. On December 11, 2015, Respondent failed to appear before the Board.

19 C. On or about January 7, 2016, the Board sent Respondent a third letter requesting his
20 appearance in person at an office conference on January 22, 2016. Respondent failed to appear
21 on January 22, 2016.

22 **FOURTH CAUSE TO REVOKE PROBATION**

23 **(Psychiatric Evaluation)**

24 11. At all times after the effective date of Respondent's probation, Condition 9 stated:

25 "Commencing the effective date of this decision, and on a periodic basis as may be required
26 by the board or its designee, respondent shall undergo, at his own expense, psychiatric
27 evaluation(s) by a board-appointed or board-approved licensed mental health practitioner. The
28 approved evaluator shall be provided with a copy of the board's Accusation and decision.

1 Respondent shall sign a release authorizing the evaluator to furnish the board with a current
2 diagnosis and a written report regarding the Respondent's judgment and ability to function
3 independently as a pharmacist with safety to the public. Respondent shall comply with all the
4 recommendations of the evaluator if directed by the board or its designee."

5 12. Respondent's probation is subject to revocation because he failed to comply with
6 Condition 9, referenced above. The facts and circumstances regarding this violation are that
7 Respondent did not submit the name of an appropriate mental health evaluator or undergo an
8 evaluation.

9 **FIFTH CAUSE TO REVOKE PROBATION**

10 **(Psychotherapy)**

11 13. At all times after the effective date of Respondent's probation, Condition 10 stated:
12 "Within thirty (30) days of the effective date of this decision, respondent shall submit to the
13 board or its designee, for prior approval, the name and qualifications of a licensed mental health
14 practitioner of Respondent's choice. Within thirty (30) days of approval thereof, respondent shall
15 submit documentation to the board demonstrating the commencement of psychotherapy with the
16 approved licensed mental health practitioner. . . . Failure to comply with any requirement or
17 deadline stated by this paragraph shall be considered a violation of probation."

18 14. Respondent's probation is subject to revocation because he failed to comply with
19 Condition 10, referenced above. The facts and circumstances regarding this violation are that
20 Respondent did not submit the name of a mental health practitioner to the Board within 30 days,
21 nor did he provide documentation that he commenced psychotherapy.

22 **SIXTH CAUSE TO REVOKE PROBATION**

23 **(Medical Evaluation)**

24 15. At all times after the effective date of Respondent's probation, Condition 11 stated:
25 "Within thirty (30) days of the effective date of this decision, and on a periodic basis
26 thereafter as may be required by the Board or its designee, respondent shall undergo a medical
27 evaluation, at Respondent's own expense, by a Board-appointed or Board-approved physician
28 who shall furnish a medical report to the Board. The approved physician shall be provided with a

1 copy of the Board's Accusation and decision. A record of this notification must be provided to the
2 Board upon request. Respondent shall sign a release authorizing the physician to furnish the
3 Board with a current diagnosis and a written report regarding the Respondent's ability to function
4 independently as a pharmacist with safety to the public. Respondent shall comply with all the
5 recommendations of the physician if directed by the board or its designee."

6 16. Respondent's probation is subject to revocation because he failed to comply with
7 Condition 11, referenced above. The facts and circumstances regarding this violation are that
8 Respondent failed to submit the name of a licensed mental health practitioner for approval within
9 30 days.

10 SEVENTH CAUSE TO REVOKE PROBATION

11 (Random Drug Screening)

12 17. At all times after the effective date of Respondent's probation, Condition 12 stated:
13 ~~"Respondent, at his own expense, shall participate in random testing, including but not~~
14 ~~limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug~~
15 ~~screening program as directed by the board or its designee. Respondent may be required to~~
16 ~~participate in testing for the entire probation period and the frequency of testing will be~~
17 ~~determined by the board or its designee. At all times, respondent shall fully cooperate with the~~
18 ~~board or its designee, and shall, when directed, submit to such tests and samples for the detection~~
19 ~~of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its~~
20 ~~designee may direct. Failure to timely submit to testing as directed shall be considered a violation~~
21 ~~of probation."~~

22 18. Respondent's probation is subject to revocation because he failed to comply with
23 Condition 12, referenced above. The facts and circumstances regarding this violation are that
24 Respondent failed to enroll in PRP, which was to conduct the screenings. Thus, Respondent has
25 not submitted to any screenings.

26 EIGHTH CAUSE TO REVOKE PROBATION

27 (Prescription Coordination and Monitoring of Prescription Use)

28 19. At all times after the effective date of Respondent's probation, Condition 14 stated:

1 “Within thirty (30) days of the effective date of this decision, Respondent shall submit to
2 the board, for its prior approval, the name and qualifications of a single physician, nurse
3 practitioner, physician assistant, or psychiatrist of Respondent’s choice, who shall be aware of the
4 Respondent’s history with controlled substances, and/or dangerous drugs and of mental illness
5 and who will coordinate and monitor any prescriptions for Respondent for dangerous drugs,
6 controlled substances or mood-altering drugs. The approved practitioner shall be provided with a
7 copy of the Board’s Accusation and decision. A record of this notification must be provided to
8 the Board upon request. Respondent shall sign a release authorizing the practitioner to
9 communicate with the board about Respondent’s treatment(s). The coordinating physician, nurse
10 practitioner, physician assistant, or psychiatrist shall report to the Board on a quarterly basis for
11 the duration of probation regarding Respondent’s compliance with this condition. . . . Failure to
12 timely submit the selected practitioner or replacement practitioner to the board for approval, or to
13 ensure the required reporting thereby on the quarterly reports, shall be considered a violation of
14 probation.”

15 20. Respondent’s probation is subject to revocation because he failed to comply with
16 Condition 14, referenced above. The facts and circumstances regarding this violation are that
17 Respondent failed to submit the name of a licensed practitioner for approval within 30 days.

18 **NINTH CAUSE TO REVOKE PROBATION**

19 **(Probation and Parole Reports)**

20 21. At all times after the effective date of Respondent’s probation, Condition 18 stated:
21 “Respondent shall provide a copy of the conditions of any criminal probation/parole to the
22 board, in writing, within ten (10) days of the issuance or modification of those conditions.
23 Respondent shall provide the name of his probation/parole officer to the board, in writing, within
24 ten (10) days after that officer is designated or a replacement for that officer is designated.
25 Respondent shall provide a copy of all criminal probation/parole reports to the board within ten
26 (10) days after respondent receives a copy of such a report. Failure to timely make any of the
27 submissions required hereby shall be considered a violation of probation.”
28

1 22. Respondent's probation is subject to revocation because he failed to comply with
2 Condition 18, referenced above. The facts and circumstances regarding this violation are that
3 Respondent failed to submit probation/parole reports as required.

4 **TENTH CAUSE TO REVOKE PROBATION**

5 **(Reimbursement of Costs)**

6 23. At all times after the effective date of Respondent's probation, Condition 20 stated:
7 "As a condition precedent to successful completion of probation, respondent shall pay to
8 the board its costs of investigation and prosecution in the amount of \$2,780. Respondent shall
9 make said payments on a monthly basis on or before the same date each month as that assigned as
10 the effective date for the Decision as follows: Within 30 days of the effective date of the
11 Decision, respondent shall submit an initial payment of \$200 to the Board and thereafter \$200 per
12 month for a period of 13 consecutive months, with a final payment in the 14th month in the
13 amount of \$180. There shall be no deviation from this schedule absent prior written approval by
14 the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a
15 violation of probation.

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

18 24. Respondent's probation is subject to revocation because he failed to comply with
19 Condition 20, referenced above. The facts and circumstances regarding this violation are that
20 Respondent has not made any payments in accordance with Condition 20. Respondent failed to
21 submit payments as required in November 2015, December 2015, January 2016, February 2016,
22 and March 2016.

23 **DISCIPLINE CONSIDERATIONS**

24 25. To determine the degree of discipline, if any, to be imposed on Respondent,
25 Complainant alleges that on or about February 2, 2005, in a prior disciplinary action entitled In
26 the Matter of the Accusation Against David Lee Huynh before the Board of Pharmacy, in Case
27 No. 2781, Respondent's license was revoked, the revocation stayed, and Respondent placed on
28 five years probation. The discipline in that case was premised on four convictions that occurred

1 in January, March, April, and May of 2003. Three convictions were for violation of Vehicle
2 Code section 23152, subdivision (a) [Driving Under the Influence of Alcohol or Drugs], and one
3 was for violation of Health and Safety Code section 11350, subdivision (a) [Possession of
4 Narcotic Controlled Substance, to wit: Opiate (hydrocodone)]. That decision is now final and is
5 attached as Exhibit B and incorporated by reference as if fully set forth.

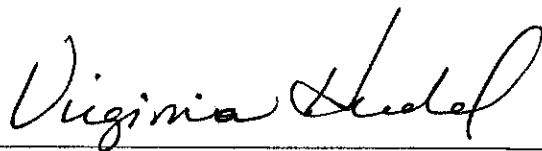
6 **PRAYER**

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

- 9 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 4587
10 and imposing the disciplinary order that was stayed thereby revoking Pharmacist License No.
11 RPH 52876 issued to David Lee Huynh;
- 12 2. Revoking or suspending Pharmacist License No. RPH 52876, issued to David Lee
13 Huynh;
- 14 3. Taking such other and further action as deemed necessary and proper.

15
16
17 DATED: _____

4/14/16



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

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Exhibit A

Decision and Order

Board of Pharmacy Case No. 4587

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

In the Matter of the Accusation Against:

DAVID LEE HUYNH
6251 Lena
Woodland Hills, CA 91367

Pharmacist License No. RPH 52876

Case No. 4587

OAH No. 2015020538

Respondent.

DECISION AND ORDER

Pursuant to the Board of Pharmacy's action on September 30, 2015, the attached Stipulated Settlement and Disciplinary Order was adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on November 9, 2015.

It is so ORDERED on October 9, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

Amy Gutierrez, Pharm.D.
Board President

OFFICIAL RECORDS
SECTION

RECORDS SECTION
STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
BOARD OF PHARMACY
2015 OCT 14 10:45 AM
DAVID LEE HUYNH
RPH 52876
OAH NO. 2015020538
CASE NO. 4587

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS L. RINALDI
Supervising Deputy Attorney General
3 DESIREE TULLENERS
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5 Los Angeles, CA 90013
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6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

Case No. 4587

12 **DAVID LEE HUYNH**

OAH No. 2015020538

13 6251 Lena
Woodland Hills, CA 91367

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 Pharmacist License No. RPH 52876

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 She brought this action solely in her official capacity and is represented in this matter by Kamala
22 D. Harris, Attorney General of the State of California, by Desiree Tulleners, Deputy Attorney
23 General.

24 2. Respondent David Lee Huynh ("Respondent") is represented in this proceeding by
25 attorney Max B. Gorby, whose address is:

26 Max B. Gorby
27 Law Offices of Max B. Gorby
710 Wilshire Boulevard, Suite 420
28 Santa Monica, CA 90401

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

3 CONTINGENCY

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

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

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

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

25 DISCIPLINARY ORDER

26 *IT IS HEREBY ORDERED* that Pharmacist License No. RPH 52876 issued to Respondent
27 is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5)
28 years on the following terms and conditions.

1 1. **Suspension**

2 **(a) Mental Health Evaluation**

3 Commencing on the effective date of this Decision, Respondent shall not engage in the
4 practice of pharmacy until notified in writing by the Board that Respondent has been deemed
5 psychologically fit to practice pharmacy safely, and the Board or its designee approves said
6 recommendation.

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 holds an interest at the time this decision becomes effective unless
21 otherwise specified in this order.

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

23 During suspension, Respondent shall not enter any pharmacy area or any portion of the
24 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
25 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
26 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
27 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
28 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the

1 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
2 and devices or controlled substances.

3 Respondent shall not engage in any activity that requires the professional judgment of a
4 pharmacist. Respondent shall not direct or control any aspect of the practice of pharmacy.
5 Respondent shall not perform the duties of a pharmacy technician or a designated representative
6 for any entity licensed by the board.

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

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

11 **(b) Pharmacists Recovery Program (PRP)**

12 Commencing on the effective date of this Decision, Respondent shall not engage in the
13 practice of pharmacy until after he has enrolled in the Pharmacist Recovery Program, completed
14 an intake and evaluation assessment by the PRP, and has been notified in writing by the Board
15 that he has been deemed to practice pharmacy safely. After he has been deemed fit to practice
16 pharmacy by the PRP, at all times Respondent shall successfully participate in, and complete the
17 treatment contract and any subsequent addendums as recommended and provided by the PRP and
18 as approved by the Board or its designee for the duration of the probation period. The costs for
19 PRP participation shall be borne by the Respondent.

20 The requirement of suspension until deemed safe to practice by the PRP evaluation is a
21 separate and distinct requirement in addition to the suspension until deemed safe to practice by
22 the mental health assessment in Condition 1(a).

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

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

1 Probation shall be automatically extended until Respondent successfully completes the
2 PRP. Any person terminated from the PRP program shall be automatically suspended by the
3 Board. Respondent may not resume the practice of pharmacy until notified by the Board in
4 writing.

5 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a
6 licensed practitioner as part of a documented medical treatment shall result in the automatic
7 suspension of practice by respondent and shall be considered a violation of probation.
8 Respondent may not resume the practice of pharmacy until notified by the Board in writing.

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

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

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

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

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

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1 Respondent shall work in a pharmacy setting with access to controlled substances for six
2 (6) consecutive months before successfully completing probation. If Respondent fails to do so,
3 probation shall be automatically extended until this condition has been met. Failure to satisfy this
4 condition within six (6) months beyond the original date of expiration of the term of probation
5 shall be considered a violation of probation.

6 **2. Tolling of Suspension**

7 During the period of suspension, Respondent shall not leave California for any period
8 exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess
9 of the (10) days during suspension shall be considered a violation of probation. Moreover, any
10 absence from California during the period of suspension exceeding ten (10) days shall toll the
11 suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days
12 respondent is absent from California. During any such period of tolling of suspension,
13 respondent must nonetheless comply with all terms and conditions of probation.

14 Respondent must notify the board in writing within ten (10) days of departure, and must
15 further notify the board in writing within ten (10) days of return. The failure to provide such
16 notification(s) shall constitute a violation of probation. Upon such departure and return,
17 respondent shall not resume the practice of pharmacy until notified by the board that the period of
18 suspension has been satisfactorily completed.

19 **3. Obey All Laws**

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

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

- 23 • an arrest or issuance of a criminal complaint for violation of any provision of the
24 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
25 substances laws
- 26 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
27 criminal complaint, information or indictment
- 28 • a conviction of any crime

1 • discipline, citation, or other administrative action filed by any state or federal agency
2 which involves respondent's pharmacist license or which is related to the practice of
3 pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging
4 for any drug, device or controlled substance,

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

6 **4. Report to the Board**

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

15 **5. Interview with the Board**

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

21 **6. Cooperate with Board Staff**

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

25 **7. Continuing Education**

26 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
27 pharmacist as directed by the board or its designee.

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1 8. Notice to Employers

2 During the period of probation, Respondent shall notify all present and prospective
3 employers of the Decision in Case Number 4587 and the terms, conditions and restrictions
4 imposed on respondent by the decision, as follows:

5 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
6 respondent undertaking any new employment, Respondent shall cause his direct supervisor,
7 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
8 tenure of employment) and owner to report to the board in writing acknowledging that the listed
9 individual(s) has/have read the decision in case number 4587, and terms and conditions imposed
10 thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or
11 supervisor(s) submit timely acknowledgment(s) to the board.

12 If Respondent works for or is employed by or through a pharmacy employment service,
13 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity
14 licensed by the Board of the terms and conditions of the Decision in Case Number 4587 in
15 advance of the Respondent commencing work at each licensed entity. A record of this
16 notification must be provided to the board upon request.

17 Furthermore, within thirty (30) days of the effective date of this Decision, and within fifteen
18 (15) days of Respondent undertaking any new employment by or through a pharmacy
19 employment service, Respondent shall cause his direct supervisor with the pharmacy employment
20 service to report to the Board in writing acknowledging that he has read the Decision in case
21 number 4587 and the terms and conditions imposed thereby. It shall be Respondent's
22 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely
23 acknowledgment(s) to the Board.

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

27 "Employment" within the meaning of this provision shall include any full-time,
28 part-time, temporary, relief or pharmacy management service as a pharmacist or any

1 position for which a pharmacist license is a requirement or criterion for employment,
2 whether the respondent is an employee, independent contractor or volunteer.

3 **9. Mental Health Examination**

4 Commencing the effective date of this decision, and on a periodic basis as may be
5 required by the board or its designee, Respondent shall undergo, at his own expense,
6 psychiatric evaluation(s) by a board-appointed or board-approved licensed mental health
7 practitioner. The approved evaluator shall be provided with a copy of the board's
8 Accusation and decision. Respondent shall sign a release authorizing the evaluator to
9 furnish the board with a current diagnosis and a written report regarding the respondent's
10 judgment and ability to function independently as a pharmacist with safety to the public.
11 Respondent shall comply with all the recommendations of the evaluator if directed by the
12 board or its designee.

13 If the evaluator recommends, and the board or its designee directs, Respondent shall
14 undergo psychotherapy. Within thirty (30) days of notification by the Board that a
15 recommendation for psychotherapy has been accepted, respondent shall submit to the Board
16 or its designee, for prior approval, the name and qualification of a licensed mental health
17 practitioner of respondent's choice. Within thirty (30) days of approval thereof by the
18 board, Respondent shall submit documentation to the Board demonstrating the
19 commencement of psychotherapy with the approved licensed mental health practitioner.
20 Should Respondent, for any reason, cease treatment with the approved licensed mental
21 health practitioner, Respondent shall notify the Board immediately and, within thirty (30)
22 days of ceasing treatment therewith, submit the name of a replacement licensed mental
23 health practitioner of Respondent's choice to the Board for its prior approval. Within thirty
24 (30) days of approval thereof, Respondent shall submit documentation to the Board
25 demonstrating the commencement of psychotherapy with the approved replacement.
26 Failure to comply with any requirement or deadline stated by this paragraph shall be
27 considered a violation of probation.

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1 Upon approval of the initial or any subsequent licensed mental health practitioner,
2 Respondent shall undergo and continue treatment with that therapist, at Respondent's own
3 expense, until the therapist recommends in writing to the Board, and the Board or its
4 designee agrees by way of a written notification to Respondent, that no further
5 psychotherapy is necessary. Upon receipt of such recommendation from the treating
6 therapist, and before determining whether to accept or reject said recommendation, the
7 board or its designee may require Respondent to undergo, at Respondent's expense, a
8 mental health evaluation by a separate board-appointed or board-approved evaluator. If the
9 approved evaluator recommends that Respondent continue psychotherapy, the board or its
10 designee may require Respondent to continue psychotherapy.

11 Psychotherapy shall be at least once a week unless otherwise approved by the
12 Board. Respondent shall provide the therapist with a copy of the Board's Accusation and
13 Decision no later than the first therapy session. Respondent shall take all necessary steps to
14 ensure that the treating therapist submits written quarterly reports to the Board concerning
15 Respondent's fitness to practice, progress in treatment, and other such information as may
16 be required by the Board or its designee.

17 If at any time the approved evaluator or therapist determines that Respondent is
18 unable to practice safely or independently as a pharmacist, the licensed mental health
19 practitioner shall notify the Board immediately by telephone and follow up by written letter
20 within three (3) working days. Upon notification from the Board or its designee of this
21 determination, Respondent shall be automatically suspended and shall not resume practice
22 until notified by the Board that practice may be resumed.

23 **10. Psychotherapy**

24 Within thirty (30) days of the effective date of this Decision, Respondent shall
25 submit to the Board or its designee, for prior approval, the name and qualifications of a
26 licensed mental health practitioner of Respondent's choice. Within thirty (30) days of
27 approval thereof, Respondent shall submit documentation to the Board demonstrating the
28 commencement of psychotherapy with the approved licensed mental health practitioner.

1 Should Respondent, for any reason, cease treatment with the approved licensed mental
2 health practitioner, Respondent shall notify the Board immediately and, within thirty (30)
3 days of ceasing treatment, submit the name of a replacement psychotherapist or licensed
4 mental health practitioner of respondent's choice to the board for its prior approval. Within
5 thirty (30) days of approval thereof, Respondent shall submit documentation to the Board
6 demonstrating the commencement of psychotherapy with the approved replacement.
7 Failure to comply with any requirement or deadline stated by this paragraph shall be
8 considered a violation of probation.

9 Upon approval of the initial or any subsequent licensed mental health practitioner,
10 Respondent shall undergo and continue treatment with that therapist, at Respondent's own
11 expense, until the therapist recommends in writing to the Board, and the Board or its
12 designee agrees by way of a written notification to Respondent, that no further

13 psychotherapy is necessary. Upon receipt of such recommendation from the treating
14 therapist, and before determining whether to accept or reject said recommendation, the
15 board or its designee may require Respondent to undergo, at Respondent's own expense, a
16 mental health evaluation by a Board-appointed or Board-approved psychiatrist or
17 psychologist. If the approved evaluator recommends that Respondent continue
18 psychotherapy, the Board or its designee may require Respondent to continue
19 psychotherapy.

20 Psychotherapy shall be at least once a week unless otherwise approved by the board.
21 Respondent shall provide the therapist with a copy of the Board's Accusation and Decision
22 no later than the first therapy session. Respondent shall take all necessary steps to ensure
23 that the treating therapist submits written quarterly reports to the Board concerning
24 Respondent's fitness to practice, progress in treatment, and such other information as may
25 be required by the Board or its designee.

26 If at any time the treating therapist determines that Respondent cannot practice
27 safely or independently, the therapist shall notify the Board immediately by telephone and
28 follow up by written letter within three (3) working days. Upon notification from the Board

1 or its designee of this determination, Respondent shall be automatically suspended and shall
2 not resume practice until notified by the Board that practice may be resumed.

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

12 During suspension, Respondent shall not engage in any activity that requires the
13 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of
14 the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician
15 or a designated representative for any entity licensed by the Board.

16 Subject to the above restrictions, Respondent may continue to own or hold an
17 interest in any licensed premises in which he holds an interest at the time this Decision
18 becomes effective unless otherwise specified in this order. Failure to comply with this
19 suspension shall be considered a violation of probation.

20 **11. Medical Evaluation**

21 Within thirty (30) days of the effective date of this decision, and on a periodic basis
22 thereafter as may be required by the Board or its designee, Respondent shall undergo a
23 medical evaluation, at Respondent's own expense, by a Board-appointed or Board-approved
24 physician who shall furnish a medical report to the Board. The approved physician shall be
25 provided with a copy of the Board's Accusation and Decision. A record of this notification
26 must be provided to the Board upon request. Respondent shall sign a release authorizing
27 the physician to furnish the Board with a current diagnosis and a written report regarding
28 the Respondent's ability to function independently as a pharmacist with safety to the public.

1 Respondent shall comply with all the recommendations of the physician if directed by the
2 Board or its designee.

3 If the physician recommends, and the Board or its designee directs, that Respondent
4 undergo medical treatment, Respondent shall, within thirty (30) days of written notice from
5 the Board, submit to the Board or its designee, for prior approval, the name and
6 qualifications of a licensed physician of respondent's choice. Within thirty (30) days of
7 approval thereof, Respondent shall submit documentation to the Board demonstrating the
8 commencement of treatment with the approved physician. Should Respondent, for any
9 reason, cease treatment with the approved physician, respondent shall notify the Board
10 immediately and, within thirty (30) days of ceasing treatment, submit the name of a
11 replacement physician of respondent's choice to the Board or its designee for prior
12 approval. Within thirty (30) days of approval thereof, Respondent shall submit
13 documentation to the Board demonstrating the commencement of treatment with the
14 approved replacement. Failure to comply with any deadline stated by this paragraph shall
15 be considered a violation of probation.

16 Upon approval of the initial or any subsequent physician, Respondent shall undergo
17 and continue treatment with that physician, at respondent's own expense, until the treating
18 physician recommends in writing to the Board, and the Board or its designee agrees by way
19 of a written notification to Respondent, that no further treatment is necessary. Upon receipt
20 of such recommendation from the treating physician, and before determining whether to
21 accept or reject said recommendation, the Board or its designee may require Respondent to
22 undergo; at Respondent's own expense, a medical evaluation by a separate Board-appointed
23 or Board-approved physician. If the approved evaluating physician recommends that
24 Respondent continue treatment, the Board or its designee may require Respondent to
25 continue treatment.

26 Respondent shall take all necessary steps to ensure that any treating physician
27 submits written quarterly reports to the Board concerning Respondent's fitness to practice,
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1 progress in treatment, and other such information as may be required by the Board or its
2 designee.

3 If at any time an approved evaluating physician or Respondent's approved treating
4 physician determines that Respondent is unable to practice safely or independently as a
5 pharmacist, the evaluating or treating physician shall notify the board immediately by
6 telephone and follow up by written letter within three (3) working days. Upon notification
7 from the Board or its designee of this determination, Respondent shall be automatically
8 suspended and shall not resume practice until notified by the Board that practice may be
9 resumed.

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

19 During suspension, Respondent shall not engage in any activity that requires the
20 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of
21 the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician
22 or a designated representative for any entity licensed by the Board.

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

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

27 If recommended by the evaluating physician and approved by the board, Respondent
28 shall be suspended from practicing pharmacy until the treating physician recommends, in

1 writing, stating the basis therefor, that Respondent can safely and independently resume the
2 practice of a pharmacist, and the Board or its designee approves said recommendation.
3 Respondent shall not resume practice until notified by the Board that practice may be
4 resumed.

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

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

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

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

22 **12. Random Drug Screening**

23 Respondent, at his own expense, shall participate in random testing, including but not
24 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other
25 drug screening program as directed by the Board or its designee. Respondent may be
26 required to participate in testing for the entire probation period and the frequency of testing
27 will be determined by the board or its designee. At all times, Respondent shall fully
28 cooperate with the Board or its designee, and shall, when directed, submit to such tests and

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

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

21 During suspension Respondent shall not engage in any activity that requires the
22 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of
23 the practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician
24 or a designated representative for any entity licensed by the Board.

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

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

1 **13. Abstain from Drugs and Alcohol Use**

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

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

15 Within thirty (30) days of the effective date of this decision, Respondent shall submit
16 to the Board, for its prior approval, the name and qualifications of a single physician, nurse
17 practitioner, physician assistant, or psychiatrist of Respondent's choice, who shall be aware
18 of the Respondent's history with controlled substances, and/or dangerous drugs and of
19 mental illness and who will coordinate and monitor any prescriptions for Respondent for
20 dangerous drugs, controlled substances or mood-altering drugs. The approved practitioner
21 shall be provided with a copy of the Board's Accusation and Decision. A record of this
22 notification must be provided to the Board upon request. Respondent shall sign a release
23 authorizing the practitioner to communicate with the Board about Respondent's
24 treatment(s). The coordinating physician, nurse practitioner, physician assistant, or
25 psychiatrist shall report to the Board on a quarterly basis for the duration of probation
26 regarding Respondent's compliance with this condition. If any substances considered
27 addictive have been prescribed, the report shall identify a program for the time limited use
28 of any such substances. The Board may require that the single coordinating physician,

1 nurse practitioner, physician assistant or psychiatrist be a specialist in addictive medicine,
2 or consult a specialist in addictive medicine. Should Respondent, for any reason, cease
3 supervision by the approved practitioner, Respondent shall notify the board immediately
4 and, within thirty (30) days of ceasing treatment, submit the name of a replacement
5 physician, nurse practitioner, physician assistant, or psychiatrist of Respondent's choice to
6 the Board or its designee for its prior approval. Failure to timely submit the selected
7 practitioner or replacement practitioner to the Board for approval, or to ensure the required
8 reporting thereby on the quarterly reports, shall be considered a violation of probation.

9 If at any time an approved practitioner determines that Respondent is unable to
10 practice safely or independently as a pharmacist, the practitioner shall notify the Board
11 immediately by telephone and follow up by written letter within three (3) working days.

12 Upon notification from the Board or its designee of this determination, Respondent shall be
13 automatically suspended and shall not resume practice until notified by the Board that
14 practice may be resumed.

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

24 During suspension, Respondent shall not engage in any activity that requires the
25 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of
26 the practice of pharmacy. Respondent shall not perform the duties of a pharmacy
27 technician or a designated representative for any entity licensed by the Board.

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

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

5 **15. Supervised Practice**

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

11 Continuous - At least 75% of a work week

12 Substantial - At least 50% of a work week

13 Partial - At least 25% of a work week

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

16 Within thirty (30) days of the effective date of this Decision, Respondent shall have
17 his supervisor submit notification to the Board in writing stating that the supervisor has read
18 the Decision in Case Number 4587 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
20 ensure that his 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
22 pharmacist-in-charge to submit timely acknowledgements to the Board shall be considered
23 a violation of probation.

24 If Respondent changes employment, it shall be the respondent's responsibility to
25 ensure that his employer(s), pharmacist-in-charge and/or supervisor(s) submit timely
26 acknowledgement(s) to the Board. Respondent shall have his new supervisor, within
27 fifteen (15) days after employment commences, submit notification to the Board in writing
28 stating the direct supervisor and pharmacist-in-charge have read the Decision in Case

1 Number 4587 and is familiar with the level of supervision as determined by the Board,
2 Respondent shall not practice pharmacy and his license shall be automatically suspended
3 until the Board or its designee approves a new supervisor. Failure to cause the direct
4 supervisor and the pharmacist-in-charge to submit timely acknowledgements to the Board
5 shall be considered a violation of probation.

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

8 During suspension, Respondent shall not enter any pharmacy area or any portion of
9 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other
10 distributor of drugs which is licensed by the Board, or any manufacturer, or where
11 dangerous drugs and devices or controlled substances are maintained. Respondent shall not
12 practice pharmacy nor do any act involving drug selection; selection of stock,

13 manufacturing, compounding, dispensing or patient consultation; nor shall Respondent
14 manage, administer, or be a consultant to any licensee of the board, or have access to or
15 control the ordering, manufacturing or dispensing of dangerous drugs and controlled
16 substances. Respondent shall not resume practice until notified by the Board.

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

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

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

25 **16. No Supervision of Ancillary Personnel**

26 During the period of probation, Respondent shall not supervise any ancillary
27 personnel, including, but not limited to, pharmacy technicians or designated representatives
28 in any entity licensed by the Board.

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

2 **17. No Ownership of Licensed Premises**

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

11 **18. Criminal Probation/Parole Reports**

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

20 **19. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC),**
21 **Serving as Designated Representative-in-Charge, or Serving as a Consultant**

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

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1 **20. 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 the amount of \$2,780. Respondent shall make
4 said payments on a monthly basis on or before the same date each month as that assigned as the
5 effective date for the Decision as follows: Within 30 days of the effective date of the Decision,
6 respondent shall submit an initial payment of \$200 to the Board and thereafter \$200 per month
7 for a period of 13 consecutive months, with a final payment in the 14th month in the amount of
8 \$180.

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

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

14 **21. Probation Monitoring Costs**

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

19 **22. Status of License**

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

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

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1. **23. License Surrender While on Probation/Suspension**

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

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

15 **24. Notification of a Change in Name, Residence Address, Mailing Address or**
16 **Employment**

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

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

24 **25. Tolling of Probation**

25 Except during periods of suspension, Respondent shall, at all times while on probation, be
26 employed as a pharmacist in California for a minimum of 40 hours per calendar month. Any
27 month during which this minimum is not met shall toll the period of probation, i.e., the period of
28 probation shall be extended by one month for each month during which this minimum is not met.

1 During any such period of tolling of probation, respondent must nonetheless comply with all
2 terms and conditions of probation.

3 Should Respondent, regardless of residency, for any reason (including vacation) cease
4 practicing as a pharmacist for a minimum of 40 hours per calendar month in California,
5 respondent must notify the Board in writing within ten (10) days of the cessation of practice, and
6 must further notify the Board in writing within ten (10) days of the resumption of practice. Any
7 failure to provide such notification(s) shall be considered a violation of probation.

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

11 "Cessation of practice" means any calendar month during which respondent is
12 not practicing as a pharmacist for at least 40 hours, as defined by Business and
13 Professions Code section 4000 et seq. "Resumption of practice" means any calendar
14 month during which respondent is practicing as a pharmacist for at least 40 hours as a
15 pharmacist as defined by Business and Professions Code section 4000 et seq.

16 Respondent is required to practice as a pharmacist in a licensed pharmacy setting that
17 dispenses medication for a minimum of one year prior to the completion of probation. After the
18 first year of probation, the Board or its designee may consider a modification of this requirement.
19 If Respondent fails to comply with this requirement or a subsequent modification thereto, such
20 failure shall be considered a violation of probation.

21 **26. Violation of Probation**

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

27 If Respondent violates probation in any respect, the Board, after giving Respondent notice
28 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that

1 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
2 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
3 a petition to revoke probation or an accusation is filed against respondent during probation, the
4 board shall have continuing jurisdiction and the period of probation shall be automatically
5 extended until the petition to revoke probation or accusation is heard and decided.

6 **27. Completion of Probation**

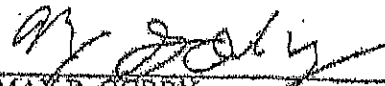
7 Upon written notice by the Board or its designee indicating successful completion of
8 probation, Respondent's license will be fully restored

9 ACCEPTANCE

10 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
11 discussed it with my attorney, Max B. Gorby. I understand the stipulation and the effect it will
12 have on my Pharmacist License. I enter into this Stipulated Settlement and Disciplinary Order
13 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
14 Board of Pharmacy.

15
16 DATED: 5-27-15 
17 DAVID LEE HUYNH
18 Respondent
19

20 I have read and fully discussed with Respondent David Lee Huynh the terms and conditions
21 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
22 its form and content.

23
24 DATED: 5-27-15 
25 MAX B. GORBY
26 Attorney for Respondent
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ENDORSEMENT

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

Dated: *May 27, 2015*

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
THOMAS L. RINALDI
Supervising Deputy Attorney General

Desiree Tulleners
DESIREE TULLENERS
Deputy Attorney General
Attorneys for Complainant

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 DESIRBE TULLENERS
Deputy Attorney General
4 State Bar No. 157464
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2578
6 Facsimile: (213) 897-2804
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4587

12 **DAVID LEE HUYNH**

ACCUSATION

13 6251 Lena
Woodland Hills, California 91367

14 **Original Pharmacist License No. RPH 52876**

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 (Board).

21 2. On or about September 5, 2001, the Board issued Original Pharmacist License No.
22 RPH 52876 to David Lee Huynh (Respondent). The Pharmacist License was in full force and
23 effect at all times relevant to the charges brought herein, and will expire on October 31, 2014,
24 unless renewed.

25 **JURISDICTION**

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

28 ///

STATUTORY PROVISIONS

4. Section 490 states, in pertinent part:

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

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

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code. . . ."

5. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or revoked."

6. Section 4300.1 states:

"The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."

7. Section 4301 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:

1
2 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit or
3 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
4 whether the act is a felony or misdemeanor or not.

5
6 (l) The conviction of a crime substantially related to the qualifications, functions, and
7 duties of a licensee under this chapter. . . .”

8 REGULATORY PROVISION

9 8. California Code of Regulations, title 16, section 1770 states:
10 "For the purpose of denial, suspension, or revocation of a personal or facility license
11 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
12 crime or act shall be considered substantially related to the qualifications, functions or duties of a
13 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
14 licensee or registrant to perform the functions authorized by his license or registration in a manner
15 consistent with the public health, safety, or welfare."

16 COST RECOVERY

17 9. Section 125.3 provides that the Board may request the administrative law judge to
18 direct a licensee found to have committed a violation or violations of the licensing act to pay a
19 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

20 FIRST CAUSE FOR DISCIPLINE

21 *(Conviction of a Substantially Related Crimes)*

22 10. Respondent is subject to disciplinary action under sections 490, 4300 and 4301,
23 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, in that,
24 Respondent was convicted of a substantially related crime, as follows:

25 a. On January 31, 2013, in the matter of *The People of the State of California v. David*
26 *Huynh*, (Super. Ct. Los Angeles County, 2012, No. 2JB10116), Respondent was convicted on his
27 plea of *nolo contendere* to one misdemeanor count of violation of Vehicle Code section 2800.1(a)
28 [evading a police officer]. The court sentenced Respondent to 3 years summary probation,

1 ordered him to complete a hospital and morgue program, to attend 52 weeks of psychological
2 counseling, to pay fines and fees or complete 157 hours of community service, and terms and
3 conditions.

4 b. The circumstances underlying the conviction are that on or about August 17, 2012,
5 Respondent operated a motor vehicle and was stopped by the Los Angeles County Sheriff's
6 Department for a traffic violation in the City of West Covina. Respondent exited the vehicle and
7 demanded that the Sheriff deputies shoot him, and then returned to his vehicle and fled from
8 deputies. West Covina Police officers, with lights and sirens activated, attempted to pull
9 Respondent over. Respondent evaded and fled from numerous West Covina Police officers,
10 California Highway Patrol officers, and a Los Angeles County Sheriff's Department helicopter,
11 on surface streets and the 60 Freeway for a distance of approximately 40 miles, with a willful and
12 wanton disregard for the safety of the motoring public and passersby. Respondent only stopped
13 fleeing when his vehicle was stopped by officers in a PIT (pursuit intervention technique)
14 maneuver which disabled Respondent's vehicle. Respondent exited the vehicle shouting "Just
15 kill me! Kill me please." Respondent was subdued and arrested. Respondent admitted to officers
16 that he went through several red lights, he knew several police vehicles were behind him with
17 lights and sirens the entire time, and that it was his intention to go to "Mexico". Respondent was
18 taken into custody. Respondent was placed on a 72 hour detention hold for evaluation and
19 treatment based on his suicidal statements upon arrest.

20 **SECOND CAUSE FOR DISCIPLINE**

21 *(Act Involving Moral Turpitude, Dishonesty, or Deceit)*

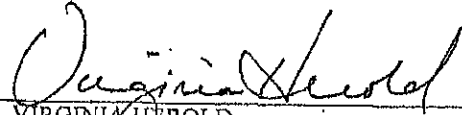
22 11. Respondent is subject to disciplinary action under section 4301, subdivision (f) on the
23 grounds of unprofessional conduct, in that, Respondent committed an act or acts involving moral
24 turpitude, dishonesty, or deceit, in that, Respondent willfully evaded numerous law enforcement
25 officials in their attempts to stop and apprehend him with their lights and sirens activated during a
26 40 mile vehicle pursuit which endangered the lives of other motorists and passersby.
27 Complainant refers to, and by reference incorporates, the allegations set forth in paragraph 10,
28 subparagraphs (a) and (b), as though fully set forth herein.

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and enforcement of this case, pursuant to section 125.3; and

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

DATED: 10/17/14



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

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

In the Matter of the Accusation Against:

DAVID LEE HUYNH
6251 Lena
Woodland Hills, CA 91367

Pharmacist License No. RPH-52876

Respondent.

Case No. 2781

OAH No. L-2005070318

DECISION AND ORDER

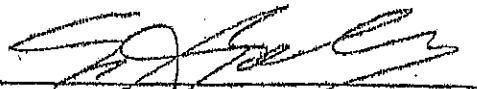
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, as its Decision in this matter.

This Decision shall become effective on April 5, 2006.

It is so ORDERED March 6, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY W. GOLDENBERG
Board President

1 BILL LOCKYER, Attorney General
of the State of California
2 SHEARON F. COHEN, R.N.
Supervising Deputy Attorney General
3 BARRY G. THORPE, State Bar No. 126422
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-5845
6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

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. 2781

13 **DAVID LEE HUYNH**
6251 Lena
Woodland Hills, CA 91367
14 Pharmacist License No. 52876

OAH No. L-2005070318

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Respondent.

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

19 PARTIES

20 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of
21 Pharmacy (Board), Department of Consumer Affairs. Complainant brought this action solely in
22 her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the
23 State of California, by Barry G. Thorpe, Deputy Attorney General.

24 2. Respondent DAVID LEE HUYNH (Respondent) is represented in this
25 proceeding by attorney Herbert Weinberg, whose address is Van Etten Suzumoto & Becket LLP,
26 1620 26th Street, Suite 6000 North, Santa Monica, CA. 90404.

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1 3. On or about September 5, 2001, the Board issued Pharmacist License No.
2 52876 to Respondent. The pharmacist license was in full force and effect at all times relevant to
3 the charges brought herein and will expire on October 31, 2006, unless renewed.

4 JURISDICTION

5 4. Accusation No. 2781 was filed before the Board on February 22, 2005,
6 and is currently pending against Respondent. The Accusation and all other statutorily required
7 documents were properly served on Respondent on March 2, 2005. Respondent timely filed his
8 Notice of Defense contesting the Accusation. A copy of Accusation No. 2781 is attached as
9 exhibit A and incorporated herein by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, fully discussed with counsel, and
12 understands the charges and allegations in Accusation No. 2781. Respondent has also carefully
13 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and
14 Disciplinary Order.

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

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
23 each and every right set forth above.

24 CULPABILITY

25 8. Respondent admits the truth of each and every charge and allegation in
26 Accusation No. 2781.

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1 pharmacy nor do any act involving drug selection, selection of stock, manufacturing,
2 compounding, dispensing or patient consultation; nor shall Respondent manage, administer, or
3 be a consultant to any licensee of the Board, or have access to or control the ordering,
4 manufacturing or dispensing of dangerous drugs or controlled substances.

5 Respondent shall not engage in any activity that requires the professional
6 judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of
7 pharmacy. Respondent shall not perform the duties of a pharmacy technician or an exempted for
8 any entity licensed by the Board.

9 2. **Obey All Laws.** Respondent shall obey all state and federal laws and
10 regulations substantially related to or governing the practice of pharmacy.

11 Respondent shall report any of the following occurrences to the Board, in writing,
12 within 72 hours of such occurrence:

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

23 3. **Reporting to the Board.** Respondent shall report to the Board
24 quarterly. The report shall be made either in person or in writing, as directed. Respondent
25 shall state under penalty of perjury whether there has been compliance with all the terms and
26 conditions of probation. If the final probation report is not made as directed, probation shall
27 be extended automatically until such time as the final report is made and accepted by the
28 Board.

1 4. **Interview with the Board.** Upon receipt of reasonable notice,
2 Respondent shall appear in person for interviews with the Board upon request at various
3 intervals at a location to be determined by the Board. Failure to appear for a scheduled
4 interview without prior notification to Board staff shall be considered a violation of probation.

5 5. **Cooperation with Board Staff.** Respondent shall cooperate with the
6 Board's inspectional program and in the Board's monitoring and investigation of Respondent's
7 compliance with the terms and conditions of his probation. Failure to comply shall be
8 considered a violation of probation.

9 6. **Continuing Education.** Respondent shall provide evidence of efforts
10 to maintain skill and knowledge as a pharmacist as directed by the Board.

11 7. **Notice to Employers.** Respondent shall notify all present and
12 prospective employers of the decision in Accusation Case No.2781 and the terms, conditions
13 and restrictions imposed on Respondent by the decision. Within 30 days of the effective date
14 of this decision, and within 15 days of Respondent undertaking new employment, Respondent
15 shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in
16 writing acknowledging the employer has read the decision in Accusation Case No. 2781.

17 If Respondent works for or is employed by or through a pharmacy employment
18 service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at
19 every pharmacy of the and terms conditions of the decision in Accusation Case No. 2781 in
20 advance of the Respondent commencing work at each pharmacy.

21 "Employment" within the meaning of this provision shall include any full-time, part-
22 time, temporary, relief or pharmacy management service as a pharmacist, whether the
23 Respondent is considered an employee or independent contractor.

24 8. **No Preceptorships, Supervision of Interns, Being Pharmacist-in-**
25 **Charge (PIC), or Serving as a Consultant.** Respondent shall not supervise any intern
26 pharmacist or perform any of the duties of a preceptor, nor shall Respondent be the
27 pharmacist-in-charge of any entity licensed by the Board unless otherwise specified in this
28 order.

1 9. **Reimbursement of Board Costs.** Respondent shall pay to the Board
2 its costs of investigation and prosecution in the amount of \$5,000.00. Respondent shall make
3 said payments as follows: Quarterly, in equal amounts, over the period of his probation.

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

6 10. **Probation Monitoring Costs.** Respondent shall pay the costs
7 associated with probation monitoring as determined by the Board each and every year of
8 probation. Such costs shall be payable to the Board at the end of each year of probation.
9 Failure to pay such costs shall be considered a violation of probation.

10 11. **Status of License.** Respondent shall, at all times while on probation,
11 maintain an active current license with the Board, including any period during which
12 suspension or probation is tolled.

13 If Respondent's license expires or is canceled by operation of law or otherwise,
14 upon renewal or reapplication, Respondent's license shall be subject to all terms and
15 conditions of this probation not previously satisfied.

16 12. **License Surrender while on Probation/Suspension.** Following the
17 effective date of this decision, should Respondent cease practice due to retirement or health, or
18 be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender
19 his license to the Board for surrender. The Board shall have the discretion whether to grant
20 the request for surrender or take any other action it deems appropriate and reasonable. Upon
21 formal acceptance of the surrender of the license, Respondent will no longer be subject to the
22 terms and conditions of probation.

23 Upon acceptance of the surrender, Respondent shall relinquish his pocket
24 license to the Board within 10 days of notification by the Board that the surrender is accepted.
25 Respondent may not reapply for any license from the Board for three years from the effective
26 date of the surrender. Respondent shall meet all requirements applicable to the license sought
27 as of the date the application for that license is submitted to the Board.

28 ///

1 13. **Notification of Employment/Mailing Address Change.** Respondent
2 shall notify the Board in writing within 10 days of any change of employment. Said
3 notification shall include the reasons for leaving and/or the address of the new employer,
4 supervisor or owner and work schedule if known. Respondent shall notify the Board in
5 writing within 10 days of a change in name, mailing address or phone number.

6 14. **Tolling of Probation.** Should Respondent, regardless of residency, for
7 any reason cease practicing pharmacy for a minimum of eighty (80) hours per calendar month
8 in California, Respondent must notify the Board in writing within 10 days of cessation of the
9 practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time
10 shall not apply to the reduction of the probation period. It is a violation of probation for
11 Respondent's probation to remain tolled pursuant to the provisions of this condition for a
12 period exceeding three years.

13 " Cessation of practice" means any period of time exceeding 30 days in which
14 Respondent is not engaged in the practice of pharmacy as defined in Section 4052 of
15 the Business and Professions Code.

16 Respondent shall work at least 40 hours in each calendar month as a pharmacist
17 and at least an average of 80 hours per month in any six consecutive months. Failure to do so
18 will be a violation of probation. If Respondent has not complied with this condition during
19 the probationary term, and Respondent has presented sufficient documentation of his good
20 faith efforts to comply with this condition, and if no other conditions have been violated, the
21 Board, in its discretion, may grant an extension of Respondent's probation period up to one
22 year without further hearing in order to comply with this condition.

23 15. **Violation of Probation.** If Respondent violates probation in any
24 respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke
25 probation and carry out the disciplinary order which was stayed. If a petition to revoke
26 probation or an accusation is filed against Respondent during probation, the Board shall have
27 continuing jurisdiction and the period of probation shall be extended, until the petition to
28 revoke probation or accusation is heard and decided.

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

6 **16. Completion of Probation.** Upon successful completion of probation,
7 Respondent's license will be fully restored.

8 **17. Rehabilitation Program - Pharmacists Recovery Program (PRP).**

9 Within 30 days of the effective date of this decision, Respondent shall contact
10 the Pharmacists Recovery Program for evaluation and shall successfully participate in and
11 complete the treatment contract and any subsequent addendums as recommended and
12 provided by the PRP and as approved by the Board. The costs for PRP participation shall be
13 borne by the Respondent.

14 If Respondent is currently enrolled in the PRP, said participation is now
15 mandatory and is no longer considered a self-referral under Business and Professions Code
16 section 4363, as of the effective date of this decision. Respondent shall successfully
17 participate in and complete his current contract and any subsequent addendums with the PRP.
18 Probation shall be automatically extended until Respondent successfully completes his
19 treatment contract. Any person terminated from the program shall be automatically suspended
20 upon notice by the Board. Respondent may not resume the practice of pharmacy until notified
21 by the Board in writing. The Board shall retain jurisdiction to institute action to terminate
22 probation for any violation of this term.

23 **18. Random Drug Screening.** Respondent, at his own expense, shall
24 participate in random testing, including but not limited to biological fluid testing (urine,
25 blood), breathalyzer, hair follicle testing, or a drug screening program approved by the Board.
26 The length of time shall be for the entire probation period and the frequency of testing will be
27 determined by the Board. At all times Respondent shall fully cooperate with the Board, and
28 shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics,

1 hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as
 2 directed shall constitute a violation of probation. Any confirmed positive drug test shall result
 3 in the immediate suspension of practice by Respondent. Respondent may not resume the
 4 practice of pharmacy until notified by the Board in writing.

5 19. **Abstain from Drugs and Alcohol Use.** Respondent shall completely
 6 abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their
 7 associated paraphernalia except when the drugs are lawfully prescribed by a licensed
 8 practitioner as part of a documented medical treatment. Upon request of the Board,
 9 Respondent shall provide documentation from the licensed practitioner that the prescription
 10 was legitimately issued and is a necessary part of the treatment of the Respondent.

11 20. **No Ownership of Premises.** Respondent shall not own, have any legal
 12 or beneficial interest in, or serve as a manager, administrator, member, officer, director,
 13 associate, or partner of any business, firm, partnership, or corporation currently or hereinafter
 14 licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any
 15 entity licensed by the Board within 90 days following the effective date of this decision and
 16 shall immediately, hereafter provide written proof thereof to the Board.

17
 18 **ACCEPTANCE**

19 I have carefully read the above Stipulated Settlement and Disciplinary Order
 20 and have fully discussed it with my attorney, Herbert Weinberg, Esq. I understand the
 21 stipulation and the effect it will have on my pharmacist license. I enter into this Stipulated
 22 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
 23 bound by the Decision and Order of the Board.

24 DATED: 12/22/05

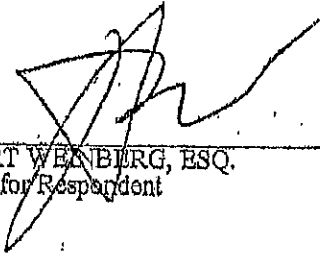
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 26 

27 DAVID LEE HUYNH
 Respondent

28 1/1

1 I have read and fully discussed with Respondent DAVID LEE HUYNH the
 2 terms and conditions and other matters contained in the above Stipulated Settlement and
 3 Disciplinary Order. I approve its form and content.

4 DATED: 12/23/05



HERBERT WEISBERG, ESQ.
 Attorney for Respondent

ENDORSEMENT

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

14 DATED: 12-27-05

BILL LOCKYER, Attorney General
 of the State of California



BARRY G. THORPE
 Deputy Attorney General

Attorneys for Complainant

22 DOJ Matter ID: LA2004601082
 23 60118243.wpd

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 25
 26
 27
 28

Exhibit A
Accusation No. 2781

1 BILL LOCKYER, Attorney General
of the State of California
2 DESIREE PHILLIPS, State Bar No. 157464
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-2578
5 Facsimile: (213) 897-2804
6 Attorneys for Complainant

7
8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2781

12 **DAVID LEE HUYNH**

6251 Lena

13 Woodland Hills, CA 91367

14 Pharmacist License No. RPH-52876

15 Respondant.

GAH No. L-2004080387

ACCUSATION

16
17 Complainant alleges:

18 **PARTIES**

19 I. Patricia F. Harris (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
21 Affairs.

22 2. On or about September 5, 2001, the Board of Pharmacy (Board) issued
23 Pharmacist License No. RPH-52876 to David Lee Huynh (Respondent). The pharmacist license
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 October 31, 2006, unless renewed.

26 ///

27 ///

28 ///

JURISDICTION

1
2 3. This Accusation is brought before the Board, under the authority of the
3 following laws. All section references are to the Business and Professions Code (Code) unless
4 otherwise indicated.

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

9 5. Section 490 of the Code states:

10 "A board may suspend or revoke a license on the ground that the licensee has been
11 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties
12 of the business or profession for which the license was issued. A conviction within the meaning
13 of this section means a plea or verdict of guilty or a conviction following a plea of nolo
14 contendere. Any action which a board is permitted to take following the establishment of a
15 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
16 been affirmed on appeal, or when an order granting probation is made suspending the imposition
17 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
18 Penal Code."

19 6. Section 4022 of the Code states:

20 "Dangerous drug' or 'dangerous device' means any drug or device unsafe for
21 self-use, except veterinary drugs that are labeled as such, and includes the following:

22 (a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing
23 without prescription,' 'Rx only,' or words of similar import.

24 (b) Any device that bears the statement: "Caution: federal law restricts this
25 device to sale by or on the order of a _____," "Rx only," or words of similar import, the
26 blank to be filled in with the designation of the practitioner licensed to use or order use of the
27 device.

28 ///

1 "(c) Any other drug or device that by federal or state law can be lawfully
2 dispensed only on prescription or furnished pursuant to Section 4006."

3 7. Section 4059, subdivision (a), of the Code states:

4 "A person may not furnish any dangerous drug, except upon the prescription of a
5 physician, dentist, podiatrist, optometrist, or veterinarian. A person may not furnish any
6 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, or
7 veterinarian."

8 8. Section 4060 of the Code states, in pertinent part:

9 "No person shall possess any controlled substance, except that furnished to a
10 person upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian . . .
11 This section shall not apply to the possession of any controlled substance by a manufacturer,
12 wholesaler, pharmacy, physician, podiatrist, dentist, optometrist, veterinarian, certified nurse-
13 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled
14 with the name and address of the supplier or producer. . . ."

15 9. Section 4300 of the Code states, in pertinent part:

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

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

20 "(1) Suspending judgment.

21 "(2) Placing him or her upon probation.

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

23 "(4) Revoking his or her license.

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

26
27 "(e) The proceedings under this article shall be conducted in accordance with
28 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code,

1 and the board shall have all the powers granted therein. The action shall be final, except that the
2 propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the
3 Code of Civil Procedure."

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

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

9 ...
10 "(h) The administering to oneself, of any controlled substance, or the use of any
11 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or
12 injurious to oneself, to a person holding a license under this chapter, or to any other person or to
13 the public, or to the extent that the use impairs the ability of the person to conduct with safety to
14 the public the practice authorized by the license.

15 ...
16 "(i) The violation of any of the statutes of this state or of the United States
17 regulating controlled substances and dangerous drugs.

18 ...
19 "(l) The conviction of a crime substantially related to the qualifications, functions,
20 and duties of a licensee under this chapter. ...

21 ...
22 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or
23 abetting the violation of or conspiring to violate any provision or term of this chapter or of the
24 applicable federal and state laws and regulations governing pharmacy, including regulations
25 established by the board.

26 "(p) Actions or conduct that would have warranted denial of a license."

27 ///

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1 11. Section 4311, subdivision (c), of the Code states:

2 "In addition to any suspension under subdivision (a), the board shall also suspend
3 any license issued by the board, or the holder thereof, if the board determines that the felony
4 conviction of the holder of the license is substantially related to the qualifications, functions, or
5 duties of the licensee."

6 12. Section 4369, subdivision (c), of the Code states:

7 "Participation in a program under this article shall not be a defense to any
8 disciplinary action that may be taken by the board. Further, no provision of this article shall
9 preclude the board from commencing disciplinary action against a licensee who is terminated
10 from a program under this article."

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

12 "For the purpose of denial, suspension, or revocation of a personal or facility
13 license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions
14 Code, a crime or act shall be considered substantially related to the qualifications, functions or
15 duties of a licensee or registrant if to a substantial degree it evidences present or potential
16 unfitness of a licensee or registrant to perform the functions authorized by his license or
17 registration in a manner consistent with the public health, safety, or welfare."

18 14. Health & Safety Code section 11170 states that, "[n]o person shall
19 prescribe, administer, or furnish a controlled substance for himself."

20 15. Health and Safety Code section 11350, subdivision (a), states:

21 "Except as otherwise provided in this division, every person who possesses. . . (2)
22 any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
23 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in
24 this state, shall be punished by imprisonment in the state prison."

25 16. Section 125.3, subdivision (a), of the Code states, in pertinent part:

26 "Except as otherwise provided by law, in any order issued in resolution of a
27 disciplinary proceeding before any board within the department . . . the board may request the
28 administrative law judge to direct a licensee found to have committed a violation or violations

1 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case."

3 17. DANGEROUS DRUGS / CONTROLLED SUBSTANCES

4 a. "Ambien," a brand name for zolpidem tartrate, a nonbarbiturate hypnotic,
5 is a Schedule IV controlled substance as designated by Health and Safety Code section
6 11057(d)(32), and is categorized as a dangerous drug pursuant to Business and Professions Code
7 section 4022.

8 b. "Norco," a brand name for hydrocodone bitartrate with acetaminophen, is
9 a Schedule III controlled substance pursuant to Health and Safety Code Section 11056,
10 subdivision (e)(4), and is categorized as a dangerous drug pursuant to Business and Professions
11 Code section 4022.

12 c. "Soma," a brand name for carisoprodol, is categorized as a dangerous drug
13 pursuant to section 4022 of the Code.

14 d. "Vicodin" or "Vicodin ES," a brand name for hydrocodone bitartrate with
15 acetaminophen, is a Schedule III controlled substance pursuant to Health and Safety Code
16 Section 11056, subdivision (e)(4), and is categorized as a dangerous drug pursuant to Business
17 and Professions Code section 4022.

18 FIRST CAUSE FOR DISCIPLINE

19 (*Conviction of Substantially Related Crimes*)

20 18. Respondent has subjected his license to discipline pursuant to sections
21 4300, 4301(l), 4311(e), and 490 of the Code, in conjunction with California Code of Regulations,
22 title 16, section 1770, on the grounds of unprofessional conduct, in that, Respondent was
23 convicted of crimes substantially related to the qualifications, functions or duties of a pharmacist,
24 as follows:

25 a. On or about March 28, 2003, Respondent was convicted, on a plea of nolo
26 contendere, of one count of violating Vehicle Code section 23152(a) (driving under the influence
27 of alcohol or drugs), a misdemeanor, in the Los Angeles Municipal Court, Van Nuys Judicial
28 District, Case No. 3VN00434, entitled *People v. David Huynh*. The circumstances surrounding

1 the conviction are that on or about January 21, 2003, Respondent was arrested by the West Los
2 Angeles Police Department after he rear-ended another vehicle. The arresting officers noted that
3 Respondent's speech was slow and deliberate, he had poor balance, and was unable to perform
4 field sobriety tests as demonstrated. Respondent's vehicle was searched by the West Los
5 Angeles Police Department officers, and a clear plastic baggie containing numerous tablets was
6 discovered. Respondent admitted to one of the arresting officers that the tablets were his, and
7 that they were Vicodin, Soma and Ambien.

8 b. On or about June 6, 2003, Respondent was convicted on his plea of guilty
9 of one count of violating Health and Safety Code section 11350(a) (possession of narcotic
10 controlled substance, to wit: opiate (hydrocodone)), a felony, in the Los Angeles Municipal
11 Court, Beverly Hills Judicial District, Case No. SA048734, entitled *People v. David Huynh*.
12 Entry of judgment was deferred for 24 months. The circumstances surrounding the conviction
13 are that on or about March 9, 2003, Respondent was arrested by the California Highway Patrol
14 (CHP) after he rear-ended a vehicle. CHP officers noted that Respondent's gait and balance were
15 unsteady; his speech was slurred, and he seemed disoriented. Respondent was unable to perform
16 field sobriety tests as demonstrated. Subsequently, Respondent was searched and 3 pills were
17 found in his left rear pants pocket. Two of the pills were identified as Soma, and the other pill
18 was identified as Vicodin. Respondent submitted a urine sample, which tested positive for
19 opiates.

20 c. On or about October 24, 2003, Respondent was convicted on his plea of
21 nolo contendere of one count of violating Vehicle Code section 23152(a) (driving under the
22 influence of alcohol/drugs), a misdemeanor, in the Los Angeles Municipal Court, Van Nuys
23 Judicial District, Case No. 3VN01574, entitled *People v. David Huynh*. The circumstances
24 surrounding the conviction are that on or about April 1, 2003, Respondent was driving a motor
25 vehicle while under the influence of an alcoholic beverage or a drug.

26 d. On or about October 24, 2003, Respondent was convicted on his plea of
27 nolo contendere of one count of violating Vehicle Code section 23152(a) (driving under the
28 influence of alcohol/drugs), a misdemeanor, in the Los Angeles Municipal Court, Van Nuys

1 Judicial Distrot, Case No. 3VN02155, entitled *People v. David Huynh*. The circumstances
2 surrounding the conviction are that on or about May 2, 2003, Respondent was arrested by
3 California Highway Patrol officers following a solo roll-over collision. Approximately 30
4 prescription pills (8 Vicodin, 2 Norco, 7 Ambien, and 13 Soma) were found loose throughout
5 Respondent's vehicle by a CHP officer. Respondent admitted to one of the arresting officers that
6 he had approximately 47 pills (20 Vicodin, 15 Soma, 10 Ambien, and 2 Norco) loose in the
7 glove box of his vehicle. Respondent was able to provide a prescription for the Vicodin ES pills,
8 only. Respondent admitted to buying the Norco pills in Mexico.

9 **SECOND CAUSE FOR DISCIPLINE**

10 *(Violation of a Statute Regulating Controlled Substances/Dangerous Drugs)*

11 19. Respondent has subjected his license to discipline pursuant to sections
12 4300 and 4301(j) of the Code, on the grounds of unprofessional conduct, in that Respondent
13 violated Health and Safety Code section 11350(a), a statute regulating controlled substances and
14 dangerous drugs, as described above in paragraph 18(b).

15 **THIRD CAUSE FOR DISCIPLINE**

16 *(Possession of Dangerous Drugs/Controlled Substances Without a Prescription)*

17 20. Respondent is subject to disciplinary action under sections 4300, and
18 4301(j) of the Code, on the grounds of unprofessional conduct for violating section 4060 of the
19 Code, in that Respondent possessed dangerous drugs/controlled substances without a prescription
20 as more fully set forth above in paragraph 18.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 *(Furnish, Administer Controlled Substances to Himself)*

23 21. Respondent has subjected his license to discipline pursuant to sections
24 4300, 4301(h), and 4301(j) of the Code, in conjunction with Health and Safety Code section
25 11170, in that Respondent furnished and administered controlled substances to himself, as
26 described above in paragraph 18.

27 ///

28 ///

1 FIFTH CAUSE FOR DISCIPLINE

2 (*Furnish Dangerous Drugs to Himself*)

3 22. Respondent is subject to disciplinary action under sections 4300 and 4059
4 of the Code, on the grounds of unprofessional conduct, in that Respondent furnished dangerous
5 drugs to himself, without a prescription, as set forth in paragraph 18.

6 SIXTH CAUSE FOR DISCIPLINE

7 (*Use of Drugs in Dangerous/Injurious Manner*)

8 23. Respondent is subject to disciplinary action under sections 4300 and
9 4301(h) of the Code, on the grounds of unprofessional conduct, in that Respondent administered
10 to himself dangerous drugs to an extent or in a manner dangerous or injurious to himself, to any
11 person, or to the public, as more fully set forth above in paragraph 18.

12 SEVENTH CAUSE FOR DISCIPLINE

13 (*Actions Warranting Denial of License*)

14 24. Respondent has subjected his license to discipline pursuant to sections
15 4300 and 4301(p) of the Code, on the grounds of unprofessional conduct, in that he committed
16 acts which would warrant denial of a license as described above in paragraphs 18 - 23.

17 EIGHTH CAUSE FOR DISCIPLINE

18 (*Violation of the Pharmacy Law*)

19 25. Respondent has subjected his license to discipline pursuant to sections
20 4300 and 4301(o) of the Code, for unprofessional conduct, in that Respondent violated
21 pharmacy laws when he committed acts as described above in paragraphs 18 - 24.

22 PRAYER

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

- 25 1. Revoking or suspending Pharmacist License No. RPH-52876, issued to
26 David Lee Huynh;
- 27 2. Ordering David Lee Huynh to pay the Board of Pharmacy the reasonable
28 costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and

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

DATED: 2/22/05

P. J. Harris
PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

Exhibit B

Decision and Order

Board of Pharmacy Case No. 2781

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

In the Matter of the Accusation Against:

DAVID LEE HUYNH
6251 Lena
Woodland Hills, CA 91367

Pharmacist License No. RPH-52876

Respondent.

Case No. 2781

OAH No. L-2005070318

DECISION AND ORDER

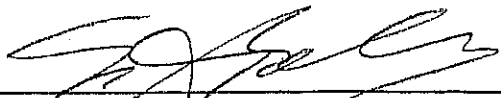
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, as its Decision in this matter.

This Decision shall become effective on April 5, 2006.

It is so ORDERED March 6, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By


STANLEY W. GOLDENBERG
Board President

1 BILL LOCKYER, Attorney General
of the State of California
2 SHARON F. COHEN, R.N.
Supervising Deputy Attorney General
3 BARRY G. THORPE, State Bar No. 126422
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-5845
6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

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. 2781

13 **DAVID LEE HUYNH**
6251 Lena
Woodland Hills, CA 91367

OAH No. L-2005070318

14 **STIPULATED SETTLEMENT AND**
15 **DISCIPLINARY ORDER**

16 Pharmacist License No. 52876

17 Respondent.

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

20 PARTIES

21 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of
22 Pharmacy (Board), Department of Consumer Affairs. Complainant brought this action solely in
23 her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the
24 State of California, by Barry G. Thorpe, Deputy Attorney General.

25 2. Respondent DAVID LEE HUYNH (Respondent) is represented in this
26 proceeding by attorney Herbert Weinberg, whose address is Van Etten Suzumoto & B
1620 26th Street, Suite 6000 North, Santa Monica, CA 90404.

27 ///

28 ///

RECEIVED BY THE BOARD OF PHARMACY
ON 05/12/05 AT 10:23 AM
BY: [Signature]
COURT REPORTER: [Signature]

1 3. On or about September 5, 2001, the Board issued Pharmacist License No.
2 52876 to Respondent. The pharmacist license was in full force and effect at all times relevant to
3 the charges brought herein and will expire on October 31, 2006, unless renewed.

4 JURISDICTION

5 4. Accusation No. 2781 was filed before the Board on February 22, 2005,
6 and is currently pending against Respondent. The Accusation and all other statutorily required
7 documents were properly served on Respondent on March 2, 2005. Respondent timely filed his
8 Notice of Defense contesting the Accusation. A copy of Accusation No. 2781 is attached as
9 exhibit A and incorporated herein by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read, fully discussed with counsel, and
12 understands the charges and allegations in Accusation No. 2781. Respondent has also carefully
13 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and
14 Disciplinary Order.

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

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
23 each and every right set forth above.

24 CULPABILITY

25 8. Respondent admits the truth of each and every charge and allegation in
26 Accusation No. 2781.

27 ///

28 ///

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

4 RESERVATION

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

8 CONTINGENCY

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

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

15 DISCIPLINARY ORDER

16 IT IS HEREBY ORDERED that Pharmacist License No. 52876 issued to
17 Respondent is revoked. However, the revocation is stayed and Respondent is placed on
18 probation for five (5) years on the following terms and conditions.

19 1. **Actual Suspension - Pharmacist.** Pharmacist License No. 52876, issued
20 to Respondent, shall be actually suspended upon the effective date of this decision, and
21 Respondent shall not engage in the practice of pharmacy until the Pharmacists Recovery Program
22 (PRP) has made a determination that Respondent is fit to practice safely and independently.
23 Respondent may enter into a treatment contract with the PRP, and seek a determination from the
24 PRP that he is fit to practice prior to the effective date of this decision.

25 During suspension, Respondent shall not enter any pharmacy area or any portion
26 of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other
27 distributor of drugs which is licensed by the Board, or any manufacturer, or where dangerous
28 drugs and devices or controlled substances are maintained. Respondent shall not practice

1 pharmacy nor do any act involving drug selection, selection of stock, manufacturing,
2 compounding, dispensing or patient consultation; nor shall Respondent manage, administer, or
3 be a consultant to any licensee of the Board, or have access to or control the ordering,
4 manufacturing or dispensing of dangerous drugs or controlled substances.

5 Respondent shall not engage in any activity that requires the professional
6 judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of
7 pharmacy. Respondent shall not perform the duties of a pharmacy technician or an exempted for
8 any entity licensed by the Board.

9 2. **Obey All Laws.** Respondent shall obey all state and federal laws and
10 regulations substantially related to or governing the practice of pharmacy.

11 Respondent shall report any of the following occurrences to the Board, in writing,
12 within 72 hours of such occurrence:

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

23 3. **Reporting to the Board.** Respondent shall report to the Board
24 quarterly. The report shall be made either in person or in writing, as directed. Respondent
25 shall state under penalty of perjury whether there has been compliance with all the terms and
26 conditions of probation. If the final probation report is not made as directed, probation shall
27 be extended automatically until such time as the final report is made and accepted by the
28 Board.

1 4. **Interview with the Board.** Upon receipt of reasonable notice,
2 Respondent shall appear in person for interviews with the Board upon request at various
3 intervals at a location to be determined by the Board. Failure to appear for a scheduled
4 interview without prior notification to Board staff shall be considered a violation of probation.

5 5. **Cooperation with Board Staff.** Respondent shall cooperate with the
6 Board's inspectional program and in the Board's monitoring and investigation of Respondent's
7 compliance with the terms and conditions of his probation. Failure to comply shall be
8 considered a violation of probation.

9 6. **Continuing Education.** Respondent shall provide evidence of efforts
10 to maintain skill and knowledge as a pharmacist as directed by the Board.

11 7. **Notice to Employers.** Respondent shall notify all present and
12 prospective employers of the decision in Accusation Case No.2781 and the terms, conditions
13 and restrictions imposed on Respondent by the decision. Within 30 days of the effective date
14 of this decision, and within 15 days of Respondent undertaking new employment, Respondent
15 shall cause his direct supervisor, pharmacist-in-charge and/or owner to report to the Board in
16 writing acknowledging the employer has read the decision in Accusation Case No. 2781.

17 If Respondent works for or is employed by or through a pharmacy employment
18 service, Respondent must notify the direct supervisor, pharmacist-in-charge, and/or owner at
19 every pharmacy of the and terms conditions of the decision in Accusation Case No. 2781 in
20 advance of the Respondent commencing work at each pharmacy.

21 "Employment" within the meaning of this provision shall include any full-time, part-
22 time, temporary, relief or pharmacy management service as a pharmacist, whether the
23 Respondent is considered an employee or independent contractor.

24 8. **No Preceptorships, Supervision of Interns, Being Pharmacist-in-
25 Charge (PIC), or Serving as a Consultant.** Respondent shall not supervise any intern
26 pharmacist or perform any of the duties of a preceptor, nor shall Respondent be the
27 pharmacist-in-charge of any entity licensed by the Board unless otherwise specified in this
28 order.

1 9. **Reimbursement of Board Costs.** Respondent shall pay to the Board
2 its costs of investigation and prosecution in the amount of \$5,000.00. Respondent shall make
3 said payments as follows: Quarterly, in equal amounts, over the period of his probation.

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

6 10. **Probation Monitoring Costs.** Respondent shall pay the costs
7 associated with probation monitoring as determined by the Board each and every year of
8 probation. Such costs shall be payable to the Board at the end of each year of probation.
9 Failure to pay such costs shall be considered a violation of probation.

10 11. **Status of License.** Respondent shall, at all times while on probation,
11 maintain an active current license with the Board, including any period during which
12 suspension or probation is tolled.

13 If Respondent's license expires or is canceled by operation of law or otherwise,
14 upon renewal or reapplication, Respondent's license shall be subject to all terms and
15 conditions of this probation not previously satisfied.

16 12. **License Surrender while on Probation/Suspension.** Following the
17 effective date of this decision, should Respondent cease practice due to retirement or health, or
18 be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender
19 his license to the Board for surrender. The Board shall have the discretion whether to grant
20 the request for surrender or take any other action it deems appropriate and reasonable. Upon
21 formal acceptance of the surrender of the license, Respondent will no longer be subject to the
22 terms and conditions of probation.

23 Upon acceptance of the surrender, Respondent shall relinquish his pocket
24 license to the Board within 10 days of notification by the Board that the surrender is accepted.
25 Respondent may not reapply for any license from the Board for three years from the effective
26 date of the surrender. Respondent shall meet all requirements applicable to the license sought
27 as of the date the application for that license is submitted to the Board.

28 ///

1 13. **Notification of Employment/Mailing Address Change.** Respondent
2 shall notify the Board in writing within 10 days of any change of employment. Said
3 notification shall include the reasons for leaving and/or the address of the new employer,
4 supervisor or owner and work schedule if known. Respondent shall notify the Board in
5 writing within 10 days of a change in name, mailing address or phone number.

6 14. **Tolling of Probation.** Should Respondent, regardless of residency, for
7 any reason cease practicing pharmacy for a minimum of eighty (80) hours per calendar month
8 in California, Respondent must notify the Board in writing within 10 days of cessation of the
9 practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time
10 shall not apply to the reduction of the probation period. It is a violation of probation for
11 Respondent's probation to remain tolled pursuant to the provisions of this condition for a
12 period exceeding three years.

13 " Cessation of practice " means any period of time exceeding 30 days in which
14 Respondent is not engaged in the practice of pharmacy as defined in Section 4052 of
15 the Business and Professions Code.

16 Respondent shall work at least 40 hours in each calendar month as a pharmacist
17 and at least an average of 80 hours per month in any six consecutive months. Failure to do so
18 will be a violation of probation. If Respondent has not complied with this condition during
19 the probationary term, and Respondent has presented sufficient documentation of his good
20 faith efforts to comply with this condition, and if no other conditions have been violated, the
21 Board, in its discretion, may grant an extension of Respondent's probation period up to one
22 year without further hearing in order to comply with this condition.

23 15. **Violation of Probation.** If Respondent violates probation in any
24 respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke
25 probation and carry out the disciplinary order which was stayed. If a petition to revoke
26 probation or an accusation is filed against Respondent during probation, the Board shall have
27 continuing jurisdiction and the period of probation shall be extended, until the petition to
28 revoke probation or accusation is heard and decided.

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

6 **16. Completion of Probation.** Upon successful completion of probation,
7 Respondent's license will be fully restored.

8 **17. Rehabilitation Program - Pharmacists Recovery Program (PRP).**

9 Within 30 days of the effective date of this decision, Respondent shall contact
10 the Pharmacists Recovery Program for evaluation and shall successfully participate in and
11 complete the treatment contract and any subsequent addendums as recommended and
12 provided by the PRP and as approved by the Board. The costs for PRP participation shall be
13 borne by the Respondent.

14 If Respondent is currently enrolled in the PRP, said participation is now
15 mandatory and is no longer considered a self-referral under Business and Professions Code
16 section 4363, as of the effective date of this decision. Respondent shall successfully
17 participate in and complete his current contract and any subsequent addendums with the PRP.
18 Probation shall be automatically extended until Respondent successfully completes his
19 treatment contract. Any person terminated from the program shall be automatically suspended
20 upon notice by the Board. Respondent may not resume the practice of pharmacy until notified
21 by the Board in writing. The Board shall retain jurisdiction to institute action to terminate
22 probation for any violation of this term.

23 **18. Random Drug Screening.** Respondent, at his own expense, shall
24 participate in random testing, including but not limited to biological fluid testing (urine,
25 blood), breathalyzer, hair follicle testing, or a drug screening program approved by the Board.
26 The length of time shall be for the entire probation period and the frequency of testing will be
27 determined by the Board. At all times Respondent shall fully cooperate with the Board, and
28 shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics,

1 hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as
 2 directed shall constitute a violation of probation. Any confirmed positive drug test shall result
 3 in the immediate suspension of practice by Respondent. Respondent may not resume the
 4 practice of pharmacy until notified by the Board in writing.

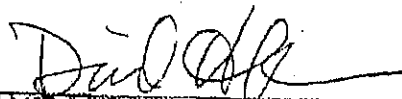
5 19. **Abstain from Drugs and Alcohol Use.** Respondent shall completely
 6 abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their
 7 associated paraphernalia except when the drugs are lawfully prescribed by a licensed
 8 practitioner as part of a documented medical treatment. Upon request of the Board,
 9 Respondent shall provide documentation from the licensed practitioner that the prescription
 10 was legitimately issued and is a necessary part of the treatment of the Respondent.

11 20. **No Ownership of Premises.** Respondent shall not own, have any legal
 12 or beneficial interest in, or serve as a manager, administrator, member, officer, director,
 13 associate, or partner of any business, firm, partnership, or corporation currently, or hereinafter
 14 licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any
 15 entity licensed by the Board within 90 days following the effective date of this decision and
 16 shall immediately thereafter provide written proof thereof to the Board.

17
 18 **ACCEPTANCE**

19 I have carefully read the above Stipulated Settlement and Disciplinary Order
 20 and have fully discussed it with my attorney, Herbert Weinberg, Esq. I understand the
 21 stipulation and the effect it will have on my pharmacist license. I enter into this Stipulated
 22 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
 23 bound by the Decision and Order of the Board.

24 DATED: 12/22/05

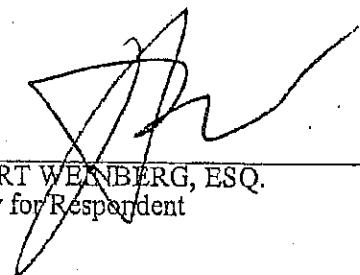
25
 26 
 27 DAVID LEE HUYNH
 Respondent

28 111

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

DATED: 12/23/05



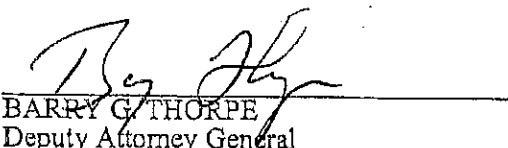
HERBERT WEINBERG, ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: 11-27-05

BILL LOCKYER, Attorney General
of the State of California



BARRY G. THORPE
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: LA2004601082
60118245.wpd

Exhibit A
Accusation No. 2781

1 BILL LOCKYER, Attorney General
of the State of California
2 DESIREE PHILLIPS, State Bar No. 157464
Deputy Attorney General
3 California Department of Justice
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-2578
5 Facsimile: (213) 897-2804
6 Attorneys for Complainant

7
8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2781

12 **DAVID LEE HUYNH**
6251 Lena
13 Woodland Hills, CA 91367
14 Pharmacist License No. RPH-52876
15 Respondent.

OAH No. L-2004080387

ACCUSATION

16
17 Complainant alleges:

18 **PARTIES**

19 1. Patricia F. Harris (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
21 Affairs.

22 2. On or about September 5, 2001, the Board of Pharmacy (Board) issued
23 Pharmacist License No. RPH-52876 to David Lee Huynh (Respondent). The pharmacist license
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 October 31, 2006, unless renewed.

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JURISDICTION

1
2 3. This Accusation is brought before the Board, under the authority of the
3 following laws. All section references are to the Business and Professions Code (Code) unless
4 otherwise indicated.

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

9 5. Section 490 of the Code states:

10 "A board may suspend or revoke a license on the ground that the licensee has been
11 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties
12 of the business or profession for which the license was issued. A conviction within the meaning
13 of this section means a plea or verdict of guilty or a conviction following a plea of nolo
14 contendere. Any action which a board is permitted to take following the establishment of a
15 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
16 been affirmed on appeal, or when an order granting probation is made suspending the imposition
17 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
18 Penal Code."

19 6. Section 4022 of the Code states:

20 "Dangerous drug' or 'dangerous device' means any drug or device unsafe for
21 self-use, except veterinary drugs that are labeled as such, and includes the following:

22 "(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing
23 without prescription,' 'Rx only,' or words of similar import.

24 "(b) Any device that bears the statement: "Caution: federal law restricts this
25 device to sale by or on the order of a _____," "Rx only," or words of similar import, the
26 blank to be filled in with the designation of the practitioner licensed to use or order use of the
27 device.

28 ///

1 "(c) Any other drug or device that by federal or state law can be lawfully
2 dispensed only on prescription or furnished pursuant to Section 4006."

3 7. Section 4059, subdivision (a), of the Code states:

4 "A person may not furnish any dangerous drug, except upon the prescription of a
5 physician, dentist, podiatrist, optometrist, or veterinarian. A person may not furnish any
6 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, or
7 veterinarian."

8 8. Section 4060 of the Code states, in pertinent part:

9 "No person shall possess any controlled substance, except that furnished to a
10 person upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian . . .
11 This section shall not apply to the possession of any controlled substance by a manufacturer,
12 wholesaler, pharmacy, physician, podiatrist, dentist, optometrist, veterinarian, certified nurse-
13 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled
14 with the name and address of the supplier or producer. . . ."

15 9. Section 4300 of the Code states, in pertinent part:

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

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

20 "(1) Suspending judgment.

21 "(2) Placing him or her upon probation.

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

23 "(4) Revoking his or her license.

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

26 . . .

27 "(e) The proceedings under this article shall be conducted in accordance with
28 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code,

1 and the board shall have all the powers granted therein. The action shall be final, except that the
2 propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the
3 Code of Civil Procedure."

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

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

9 ...

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

15 ...

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

18 ...

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

21 ...

22 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or
23 abetting the violation of or conspiring to violate any provision or term of this chapter or of the
24 applicable federal and state laws and regulations governing pharmacy, including regulations
25 established by the board.

26 "(p) Actions or conduct that would have warranted denial of a license."

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1 11. Section 4311, subdivision (c), of the Code states:

2 "In addition to any suspension under subdivision (a), the board shall also suspend
3 any license issued by the board, or the holder thereof, if the board determines that the felony
4 conviction of the holder of the license is substantially related to the qualifications, functions, or
5 duties of the licensee."

6 12. Section 4369, subdivision (c), of the Code states:

7 "Participation in a program under this article shall not be a defense to any
8 disciplinary action that may be taken by the board. Further, no provision of this article shall
9 preclude the board from commencing disciplinary action against a licensee who is terminated
10 from a program under this article."

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

12 "For the purpose of denial, suspension, or revocation of a personal or facility
13 license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions
14 Code, a crime or act shall be considered substantially related to the qualifications, functions or
15 duties of a licensee or registrant if to a substantial degree it evidences present or potential
16 unfitness of a licensee or registrant to perform the functions authorized by his license or
17 registration in a manner consistent with the public health, safety, or welfare."

18 14. Health & Safety Code section 11170 states that, "[n]o person shall
19 prescribe, administer, or furnish a controlled substance for himself."

20 15. Health and Safety Code section 11350, subdivision (a), states:

21 "Except as otherwise provided in this division, every person who possesses. . . (2)
22 any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
23 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in
24 this state, shall be punished by imprisonment in the state prison."

25 16. Section 125.3, subdivision (a), of the Code states, in pertinent part:

26 "Except as otherwise provided by law, in any order issued in resolution of a
27 disciplinary proceeding before any board within the department . . . the board may request the
28 administrative law judge to direct a licentiate found to have committed a violation or violations

1 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case."

3 17. DANGEROUS DRUGS / CONTROLLED SUBSTANCES

4 a. "Ambien," a brand name for zolpidem tartrate, a nonbarbiturate hypnotic,
5 is a Schedule IV controlled substance as designated by Health and Safety Code section
6 11057(d)(32), and is categorized as a dangerous drug pursuant to Business and Professions Code
7 section 4022.

8 b. "Norco," a brand name for hydrocodone bitartrate with acetaminophen, is
9 a Schedule III controlled substance pursuant to Health and Safety Code Section 11056,
10 subdivision (e)(4), and is categorized as a dangerous drug pursuant to Business and Professions
11 Code section 4022.

12 c. "Soma," a brand name for carisoprodol, is categorized as a dangerous drug
13 pursuant to section 4022 of the Code.

14 d. "Vicodin" or "Vicodin ES," a brand name for hydrocodone bitartrate with
15 acetaminophen, is a Schedule III controlled substance pursuant to Health and Safety Code
16 Section 11056, subdivision (e)(4), and is categorized as a dangerous drug pursuant to Business
17 and Professions Code section 4022.

18 FIRST CAUSE FOR DISCIPLINE

19 *(Conviction of Substantially Related Crimes)*

20 18. Respondent has subjected his license to discipline pursuant to sections
21 4300, 4301(l), 4311(c), and 490 of the Code, in conjunction with California Code of Regulations,
22 title 16, section 1770, on the grounds of unprofessional conduct, in that, Respondent was
23 convicted of crimes substantially related to the qualifications, functions or duties of a pharmacist,
24 as follows:

25 a. On or about March 28, 2003, Respondent was convicted, on a plea of nolo
26 contendere, of one count of violating Vehicle Code section 23152(a) (driving under the influence
27 of alcohol or drugs), a misdemeanor, in the Los Angeles Municipal Court, Van Nuys Judicial
28 District, Case No. 3VN00434, entitled *People v. David Huynh*. The circumstances surrounding

1 the conviction are that on or about January 21, 2003, Respondent was arrested by the West Los
2 Angeles Police Department after he rear-ended another vehicle. The arresting officers noted that
3 Respondent's speech was slow and deliberate, he had poor balance, and was unable to perform
4 field sobriety tests as demonstrated. Respondent's vehicle was searched by the West Los
5 Angeles Police Department officers, and a clear plastic baggie containing numerous tablets was
6 discovered. Respondent admitted to one of the arresting officers that the tablets were his, and
7 that they were Vicodin, Soma and Ambien.

8 b. On or about June 6, 2003, Respondent was convicted on his plea of guilty
9 of one count of violating Health and Safety Code section 11350(a) (possession of narcotic
10 controlled substance, to wit: opiate (hydrocodone)), a felony, in the Los Angeles Municipal
11 Court, Beverly Hills Judicial District, Case No. SA048734, entitled *People v. David Huynh*.
12 Entry of judgment was deferred for 24 months. The circumstances surrounding the conviction
13 are that on or about March 9, 2003, Respondent was arrested by the California Highway Patrol
14 (CHP) after he rear-ended a vehicle. CHP officers noted that Respondent's gait and balance were
15 unsteady, his speech was slurred, and he seemed disoriented. Respondent was unable to perform
16 field sobriety tests as demonstrated. Subsequently, Respondent was searched and 3 pills were
17 found in his left rear pants pocket. Two of the pills were identified as Soma, and the other pill
18 was identified as Vicodin. Respondent submitted a urine sample, which tested positive for
19 opiates.

20 c. On or about October 24, 2003, Respondent was convicted on his plea of
21 nolo contendere of one count of violating Vehicle Code section 23152(a) (driving under the
22 influence of alcohol/drugs), a misdemeanor, in the Los Angeles Municipal Court, Van Nuys
23 Judicial District, Case No. 3VN01574, entitled *People v. David Huynh*. The circumstances
24 surrounding the conviction are that on or about April 1, 2003, Respondent was driving a motor
25 vehicle while under the influence of an alcoholic beverage or a drug.

26 d. On or about October 24, 2003, Respondent was convicted on his plea of
27 nolo contendere of one count of violating Vehicle Code section 23152(a) (driving under the
28 influence of alcohol/drugs), a misdemeanor, in the Los Angeles Municipal Court, Van Nuys

1 Judicial District, Case No. 3VN02155, entitled *People v. David Huynh*. The circumstances
2 surrounding the conviction are that on or about May 2, 2003, Respondent was arrested by
3 California Highway Patrol officers following a solo roll-over collision. Approximately 30
4 prescription pills (8 Vicodin, 2 Norco, 7 Ambien, and 13 Soma) were found loose throughout
5 Respondent's vehicle by a CHP officer. Respondent admitted to one of the arresting officers that
6 he had approximately 47 pills (20 Vicodin, 15 Soma, 10 Ambien, and 2 Norco) loose in the
7 glove box of his vehicle. Respondent was able to provide a prescription for the Vicodin ES pills,
8 only. Respondent admitted to buying the Norco pills in Mexico.

9 **SECOND CAUSE FOR DISCIPLINE**

10 *(Violation of a Statute Regulating Controlled Substances/Dangerous Drugs)*

11 19. Respondent has subjected his license to discipline pursuant to sections
12 4300 and 4301(j) of the Code, on the grounds of unprofessional conduct, in that Respondent
13 violated Health and Safety Code section 11350(a), a statute regulating controlled substances and
14 dangerous drugs, as described above in paragraph 18(b).

15 **THIRD CAUSE FOR DISCIPLINE**

16 *(Possession of Dangerous Drugs/Controlled Substances Without a Prescription)*

17 20. Respondent is subject to disciplinary action under sections 4300, and
18 4301(j) of the Code, on the grounds of unprofessional conduct for violating section 4060 of the
19 Code, in that Respondent possessed dangerous drugs/controlled substances without a prescription
20 as more fully set forth above in paragraph 18.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 *(Furnish, Administer Controlled Substances to Himself)*

23 21. Respondent has subjected his license to discipline pursuant to sections
24 4300, 4301(h), and 4301(j) of the Code, in conjunction with Health and Safety Code section
25 11170, in that Respondent furnished and administered controlled substances to himself, as
26 described above in paragraph 18.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 *(Furnish Dangerous Drugs to Himself)*

3 22. Respondent is subject to disciplinary action under sections 4300 and 4059
4 of the Code, on the grounds of unprofessional conduct, in that Respondent furnished dangerous
5 drugs to himself, without a prescription, as set forth in paragraph 18.

6 **SIXTH CAUSE FOR DISCIPLINE**

7 *(Use of Drugs in Dangerous/Injurious Manner)*

8 23. Respondent is subject to disciplinary action under sections 4300 and
9 4301(h) of the Code, on the grounds of unprofessional conduct, in that Respondent administered
10 to himself dangerous drugs to an extent or in a manner dangerous or injurious to himself, to any
11 person, or to the public, as more fully set forth above in paragraph 18.

12 **SEVENTH CAUSE FOR DISCIPLINE**

13 *(Actions Warranting Denial of License)*

14 24. Respondent has subjected his license to discipline pursuant to sections
15 4300 and 4301(p) of the Code, on the grounds of unprofessional conduct, in that he committed
16 acts which would warrant denial of a license as described above in paragraphs 18 - 23.

17 **EIGHTH CAUSE FOR DISCIPLINE**

18 *(Violation of the Pharmacy Law)*

19 25. Respondent has subjected his license to discipline pursuant to sections
20 4300 and 4301(o) of the Code, for unprofessional conduct, in that Respondent violated
21 pharmacy laws when he committed acts as described above in paragraphs 18 - 24.

22 **PRAYER**

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

- 25 1. Revoking or suspending Pharmacist License No. RPH-52876, issued to
26 David Lee Huynh;
- 27 2. Ordering David Lee Huynh to pay the Board of Pharmacy the reasonable
28 costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and

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

DATED: 2/22/05

P. J. Harris
PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant