

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

<p>In the Matter of the Accusation Against:</p> <p><b>HUNG DUY NGUYEN</b> 209 E. Commonwealth Ave., Apt. B Alhambra, CA 91801</p> <p><b>Intern Pharmacist Registration No. INT 32061</b></p> <p style="text-align: right;">Respondent.</p>	<p>Case No. 6356</p> <p>OAH No. 2018070350</p> <p><b>STIPULATED SETTLEMENT AND DISCIPLINARY ORDER</b></p>
<p>In the Matter of the Statement of Issues Against:</p> <p><b>HUNG DUY NGUYEN</b></p> <p><b>Applicant for Pharmacist License</b></p> <p style="text-align: right;">Respondent.</p>	<p>Case No. 6370</p> <p>OAH No. 2018070351</p> <p><b>STIPULATED SETTLEMENT AND DISCIPLINARY ORDER</b></p>

**DECISION AND ORDER**

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

This Decision shall become effective at 5:00 p.m. on March 21, 2019.

It is so ORDERED on February 19, 2019.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

Victor Law, R.Ph.  
Board President

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

12 In the Matter of the Accusation Against:  
13 **HUNG DUY NGUYEN**  
14 **209 E. Commonwealth Ave., Apt. B**  
15 **Alhambra, CA 91801**  
16 **Intern Pharmacist Registration No. INT**  
**32061**  
17 Respondent.

Case No. 6356  
OAH No. 2018070350  
**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

18 In the Matter of the Statement of Issues  
19 Against:  
20 **HUNG DUY NGUYEN**  
21 **Applicant for Pharmacist License**  
22 Respondent.

Case No. 6370  
OAH No. 2018070351  
**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

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24  
25 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
26 entitled proceedings that the following matters are true:

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1 PARTIES

2 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy  
3 (Board). She brought these actions solely in her official capacity and is represented in the above  
4 entitled matters by Xavier Becerra, Attorney General of the State of California, by William D.  
5 Gardner, Deputy Attorney General.

6 2. Respondent Hung Duy Nguyen (Respondent) is represented in these proceedings by  
7 attorney Adam B. Brown, whose address is 3848 W. Carson St., Ste. 206, Torrance, CA 90503.

8 3. On or about September 4, 2013, the Board issued Intern Pharmacist Registration No.  
9 INT 32061 to Respondent. The Intern Pharmacist Registration was in full force and effect at all  
10 times relevant to the charges brought in Accusation No. 6356, expired on May 31, 2018, and is  
11 not eligible for renewal.

12 4. On or about June 2, 2017, the Board received a Pharmacist Examination and  
13 Licensure Application from Respondent. On or about May 8, 2017, Respondent certified under  
14 penalty of perjury to the truthfulness of all statements, answers, and representations in the  
15 application. On or about November 30, 2017, the Board denied Respondent's Pharmacist  
16 Examination and Licensure Application.

17 JURISDICTION

18 5. Accusation No. 6356 was filed before the Board, and is currently pending against  
19 Respondent. The Accusation and all other statutorily required documents were properly served  
20 on Respondent on May 11, 2018. Respondent timely filed his Notice of Defense contesting the  
21 Accusation. A copy of Accusation No. 6356 is attached as Exhibit A and incorporated herein by  
22 reference.

23 6. Statement of Issues No. 6370 was filed before the Board, and is currently pending  
24 against Respondent. The Statement of Issues and all other statutorily required documents were  
25 properly served on Respondent on May 11, 2018. A copy of Statement of Issues No. 6370 is  
26 attached as Exhibit B and incorporated herein by reference.

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1 ADVISEMENT AND WAIVERS

2 7. Respondent has carefully read, fully discussed with counsel, and understands the  
3 charges and allegations in Accusation No. 6356 and Statement of Issues No. 6370. Respondent  
4 has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated  
5 Settlement and Disciplinary Order.

6 8. Respondent is fully aware of his legal rights in this matter, including the right to a  
7 hearing on the charges and allegations in the Accusation and Statement of Issues; the right to  
8 confront and cross-examine the witnesses against him; the right to present evidence and to testify  
9 on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses  
10 and the production of documents; the right to reconsideration and court review of an adverse  
11 decision; and all other rights accorded by the California Administrative Procedure Act and other  
12 applicable laws.

13 9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
14 every right set forth above.

15 CULPABILITY

16 10. Respondent understands and agrees that the charges and allegations in Accusation  
17 No. 6356 and Statement of Issues No. 6370, if proven at a hearing, constitute cause for imposing  
18 discipline upon his Intern Pharmacist Registration and for denying his application for a  
19 Pharmacist License.

20 11. For the purpose of resolving the Accusation and the Statement of Issues without the  
21 expense and uncertainty of further proceedings, Respondent agrees that, at a hearing,  
22 Complainant could establish a factual basis for the charges in the Accusation and the Statement of  
23 Issues, and that Respondent hereby gives up his right to contest those charges.

24 12. Respondent agrees that his Intern Pharmacist Registration is subject to discipline and  
25 that his application for a Pharmacist License is subject to denial, and he agrees to be bound by the  
26 Board's probationary terms as set forth in the Disciplinary Order below.

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CONTINGENCY

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

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

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

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

**DISCIPLINARY ORDER**

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24       **IT IS HEREBY ORDERED** that Intern Pharmacist Registration No. INT 32061 issued to  
25 Respondent Hung Duy Nguyen is surrendered and accepted by the Board of Pharmacy.

26       1. Respondent shall lose any and all remaining rights and privileges associated with his  
27 cancelled pharmacist intern registration in California as of the effective date of the Board's  
28 Decision and Order.

1           3.     Respondent shall cause to be delivered to the Board his pocket license and, if issued,  
2 his wall certificate on or before the effective date of the Decision and Order.

3           4.     Respondent shall pay the Board \$2,600.00 for the reasonable costs of the  
4 investigation and enforcement of Accusation No. 6356. Respondent shall be permitted to pay  
5 said costs in thirty-six (36) successive and equal monthly installments, with the first payment  
6 being due within thirty (30) days of the effective date of the Decision and Order. The Board  
7 reserves the right to pursue any lawful measures in collecting on the costs ordered and past due,  
8 including taking disciplinary action against any license(s) then held by Respondent.

9           **IT IS HEREBY FURTHER ORDERED** that the application of Respondent Hung Duy  
10 Nguyen for licensure is hereby granted. Upon successfully completing the licensure examination  
11 and all other licensing requirements including payment of all fees, a pharmacist license shall be  
12 issued to Respondent. Said license shall immediately be revoked, the order of revocation stayed,  
13 and Respondent's license shall be placed on probation for a period of four (4) years on the  
14 following terms and conditions:

15           1.     **Obey All Laws**

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

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

- 19           • an arrest or issuance of a criminal complaint for violation of any provision of the  
20           Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
21           substances laws
- 22           • a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal  
23           criminal proceeding to any criminal complaint, information or indictment
- 24           • a conviction of any crime
- 25           • the filing of a disciplinary pleading, issuance of a citation, or initiation of another  
26           administrative action filed by any state or federal agency which involves  
27           respondent's license or which is related to the practice of pharmacy or the  
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1 manufacturing, obtaining, handling, distributing, billing, or charging for any drug,  
2 device or controlled substance.

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

4 **2. Report to the Board**

5 Respondent shall report to the board quarterly, on a schedule as directed by the board or its  
6 designee. The report shall be made either in person or in writing, as directed. Among other  
7 requirements, respondent shall state in each report under penalty of perjury whether there has  
8 been compliance with all the terms and conditions of probation.

9 Failure to submit timely reports in a form as directed shall be considered a violation of  
10 probation. Any period(s) of delinquency in submission of reports as directed may be added to the  
11 total period of probation. Moreover, if the final probation report is not made as directed,  
12 probation shall be automatically extended until such time as the final report is made and accepted  
13 by the board.

14 **3. Interview with the Board**

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

20 **4. Cooperate with Board Staff**

21 Respondent shall timely cooperate with the board's inspection program and with the board's  
22 monitoring and investigation of respondent's compliance with the terms and conditions of his  
23 probation, including but not limited to: timely responses to requests for information by board  
24 staff; timely compliance with directives from board staff regarding requirements of any term or  
25 condition of probation; and timely completion of documentation pertaining to a term or condition  
26 of probation. Failure to timely cooperate shall be considered a violation of probation.

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1           **5. Continuing Education**

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

4           **6. Reporting of Employment and Notice to Employers**

5           During the period of probation, respondent shall notify all present and prospective  
6 employers of the decision in case number 6370 and the terms, conditions and restrictions imposed  
7 on respondent by the decision, as follows:

8           Within thirty (30) days of the effective date of this decision, and within ten (10) days of  
9 undertaking any new employment, respondent shall report to the board in writing the name,  
10 physical address, and mailing address of each of his employer(s), and the name(s) and telephone  
11 number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in- charge, designated  
12 representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work  
13 schedule, if known. Respondent shall also include the reason(s) for leaving the prior  
14 employment. Respondent shall sign and return to the board a written consent authorizing the  
15 board or its designee to communicate with all of respondent's employer(s) and supervisor(s), and  
16 authorizing those employer(s) or supervisor(s) to communicate with the board or its designee,  
17 concerning respondent's work status, performance, and monitoring. Failure to comply with the  
18 requirements or deadlines of this condition shall be considered a violation of probation.

19           Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
20 respondent undertaking any new employment, respondent shall cause (a) his direct supervisor, (b)  
21 his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other  
22 compliance supervisor, and (c) the owner or owner representative of his employer, to report to the  
23 board in writing acknowledging that the listed individual(s) has/have read the decision in case  
24 number 6370, and terms and conditions imposed thereby. If one person serves in more than one  
25 role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's  
26 responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the  
27 event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term  
28 of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in



1 writing within fifteen (15) days of the change acknowledging that he or she has read the decision  
2 in case number 6370, and the terms and conditions imposed thereby.

3 If respondent works for or is employed by or through an employment service, respondent  
4 must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board  
5 of the decision in case number 6370, and the terms and conditions imposed thereby in advance of  
6 respondent commencing work at such licensed entity. A record of this notification must be  
7 provided to the board upon request.

8 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
9 (15) days of respondent undertaking any new employment by or through an employment service,  
10 respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service  
11 to report to the board in writing acknowledging that he or she has read the decision in case  
12 number, and the terms and conditions imposed thereby. It shall be respondent's responsibility to  
13 ensure that these acknowledgment(s) are timely submitted to the board.

14 Failure to timely notify present or prospective employer(s) or failure to cause the identified  
15 person(s) with that/those employer(s) to submit timely written acknowledgments to the board  
16 shall be considered a violation of probation.

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

21 **7. Notification of Change(s) in Name, Address(es), or Phone Number(s)**

22 Respondent shall further notify the board in writing within ten (10) days of any change in  
23 name, residence address, mailing address, e-mail address or phone number.

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

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1           **8.     Restrictions on Supervision and Oversight of Licensed Facilities**

2           During the period of probation, respondent shall not supervise any pharmacist, be the  
3 pharmacist-in-charge, designated representative-in-charge, responsible manager or other  
4 compliance supervisor of any entity licensed by the board, nor serve as a consultant. Assumption  
5 of any such unauthorized supervision responsibilities shall be considered a violation of probation.

6           During the period of probation, respondent shall not supervise any ancillary personnel,  
7 including, but not limited to, pharmacy technicians, designated representatives, designated  
8 representative-3PL in any entity licensed by the board. Assumption of any such unauthorized  
9 ancillary personnel supervision responsibilities shall be considered a violation of probation.

10           **9.     Probation Monitoring Costs**

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

15           **10.    Status of License**

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

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

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

25           Following the effective date of this decision, should respondent cease practice due to  
26 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,  
27 respondent may relinquish his license, including any indicia of licensure issued by the board,  
28 along with a request to surrender the license. The board or its designee shall have the discretion

1 whether to accept the surrender or take any other action it deems appropriate and reasonable.  
2 Upon formal acceptance of the surrender of the license, respondent will no longer be subject to  
3 the terms and conditions of probation. This surrender constitutes a record of discipline and shall  
4 become a part of the respondent's license history with the board.

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

12       **12. Practice Requirement – Extension of Probation**

13       Except during periods of suspension, respondent shall, at all times while on probation, be  
14 employed as a pharmacist in California for a minimum of 80 hours per calendar month. Any  
15 month during which this minimum is not met shall extend the period of probation by one month.  
16 During any such period of insufficient employment, respondent must nonetheless comply with all  
17 terms and conditions of probation, unless respondent receives a waiver in writing from the board  
18 or its designee.

19       If respondent does not practice as a pharmacist in California for the minimum number of  
20 hours in any calendar month, for any reason (including vacation), respondent shall notify the  
21 board in writing within ten (10) days of the conclusion of that calendar month. This notification  
22 shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the  
23 interruption or reduction in practice; and the anticipated date(s) on which respondent will resume  
24 practice at the required level. Respondent shall further notify the board in writing within ten (10)  
25 days following the next calendar month during which respondent practices as a pharmacist in  
26 California for the minimum of hours. Any failure to timely provide such notification(s) shall be  
27 considered a violation of probation.  
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1 It is a violation of probation for respondent's probation to be extended pursuant to the  
2 provisions of this condition for a total period, counting consecutive and non-consecutive months,  
3 exceeding thirty-six (36) months. The board or its designee may post a notice of the extended  
4 probation period on its website.

5 **13. Violation of Probation**

6 If respondent has not complied with any term or condition of probation, the board shall  
7 have continuing jurisdiction over respondent, and the board shall provide notice to respondent  
8 that probation shall automatically be extended, until all terms and conditions have been satisfied  
9 or the board has taken other action as deemed appropriate to treat the failure to comply as a  
10 violation of probation, to terminate probation, and to impose the penalty that was stayed. The  
11 board or its designee may post a notice of the extended probation period on its website.

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. If a petition to revoke probation or an accusation is filed against respondent during  
15 probation, or the preparation of an accusation or petition to revoke probation is requested from  
16 the Office of the Attorney General, the board shall have continuing jurisdiction and the period of  
17 probation shall be automatically extended until the petition to revoke probation or accusation is  
18 heard and decided.

19 **14. Completion of Probation**

20 Upon written notice by the board or its designee indicating successful completion of  
21 probation, respondent's license will be fully restored.

22 **15. Pharmacists Recovery Program (PRP)**

23 By no later than ten (10) days after the effective date of this decision, respondent shall have  
24 completed all of the following: contacted the Pharmacists Recovery Program (PRP) for  
25 evaluation; enrolled in the PRP; completed, signed, and returned the treatment contract as well as  
26 any addendums required or suggested by the PRP; successfully completed registration for any  
27 drug or alcohol testing mandated by the treatment contract and/or by enrollment in the PRP; and  
28 begun compliance with the drug or alcohol testing protocol(s). Respondent shall successfully

1 participate in the PRP and complete the treatment contract and any addendums required or  
2 suggested by the PRP. The costs for PRP participation shall be borne by the respondent.

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

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

10 Any of the following shall result in the automatic suspension of practice by respondent and  
11 shall be considered a violation of probation:

12 Failure to contact, complete enrollment, and execute and return the treatment contract with  
13 the PRP, including any addendum(s), within ten (10) days of the effective date of the decision as  
14 directed by the PRP;

15 Failure to complete registration for any drug or alcohol testing mandated by the treatment  
16 contract and/or by the PRP, and begin compliance with the testing protocol(s), within ten (10)  
17 days of the effective date of the decision as directed by the PRP;

18 Failure to comply with testing protocols regarding daily check-in and/or failure to complete  
19 a mandated test as directed by the PRP;

20 Any report from the PRP of material non-compliance with the terms and conditions of the  
21 treatment contract and/or any addendum(s); or

22 Termination by the PRP for non-compliance, failure to derive benefit, or as a public risk.

23 Respondent may not resume the practice of pharmacy until notified by the board in writing.

24 Probation shall be automatically extended until respondent successfully completes the PRP.  
25 The board will provide notice of any such suspension or extension of probation.

26 During any suspension, respondent shall not enter any pharmacy area or any portion of the  
27 licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug  
28 retailer, or any other distributor of drugs which is licensed by the board, or any manufacturer, or

1 any area where dangerous drugs and/or dangerous devices or controlled substances are  
2 maintained. Respondent shall not practice as a pharmacist nor do any act involving drug  
3 selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor  
4 shall respondent manage, administer, or be a consultant to any licensee of the board, or have  
5 access to or control the ordering, distributing, manufacturing or dispensing of dangerous drugs  
6 and/or dangerous devices or controlled substances.

7 During any suspension, respondent shall not engage in any activity that requires the  
8 professional judgment of and/or licensure as a pharmacist. Respondent shall not direct or control  
9 any aspect of the practice of pharmacy, or of the manufacturing, distributing, wholesaling, or  
10 retailing of dangerous drugs and/or dangerous devices or controlled substances.

11 Failure to comply with any requirement or deadline stated by this term shall be considered a  
12 violation of probation.

13 **16. Drug and Alcohol Testing**

14 Respondent, at his own expense, shall participate in testing as directed by the board or its  
15 designee for the detection of alcohol, controlled substances, and dangerous drugs and/or  
16 dangerous devices. Testing protocols may include biological fluid testing (urine, blood),  
17 breathalyzer, hair follicle testing, or other testing protocols as directed by the board or its  
18 designee. All testing must be pursuant to an observed testing protocol, unless respondent is  
19 informed otherwise in writing by the board or its designee. Respondent may be required to  
20 participate in testing for the entire probation period and frequency of testing will be determined  
21 by the board or its designee.

22 By no later than thirty (30) days after the effective date of this decision, respondent shall  
23 have completed all of the following tasks: enrolled and registered with an approved drug and  
24 alcohol testing vendor; provided that vendor with any documentation, and any information  
25 necessary for payment by respondent; commenced testing protocols, including all required  
26 contacts with the testing vendor to determine testing date(s); and begun testing. At all times,  
27 respondent shall fully cooperate with the testing vendor, and with the board or its designee, with  
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1 regard to enrollment, registration, and payment for, and compliance with, testing. Any failure to  
2 cooperate timely shall be considered a violation of probation.

3 Respondent may be required to test on any day, including weekends and holidays.

4 Respondent is required to make daily contact with the testing vendor to determine if a test is  
5 required, and if a test is required must submit to testing on the same day.

6 Prior to any vacation or other period of absence from the area where the approved testing  
7 vendor provides services, respondent shall seek and receive approval from the board or its  
8 designee to use an alternate testing vendor to ensure testing can occur. Upon approval,  
9 respondent shall enroll and register with the approved alternate drug testing vendor, provide to  
10 that alternate vendor any documentation required by the vendor, including any necessary payment  
11 by respondent. During the period of absence of the area, respondent shall commence testing  
12 protocols with the alternate vendor, including required daily contacts with the testing vendor to  
13 determine if testing is required, and required testing. Any failure to timely seek or receive  
14 approval from the board or its designee, or to timely enroll and register with, timely commence  
15 testing protocols with, or timely undergo testing with, the alternate testing vendor, shall be  
16 considered a violation of probation.

17 Upon detection of an illicit drug, controlled substance or dangerous drug, the board or its  
18 designee may require respondent to timely provide documentation from a licensed practitioner  
19 authorized to prescribe the detected substance demonstrating that the substance was administered  
20 or ingested pursuant to a legitimate prescription issued as a necessary part of treatment. All such  
21 documentation shall be provided by respondent within ten (10) days of being requested.

22 Any of the following shall be considered a violation of probation and shall result in  
23 respondent being immediately suspended from practice as a pharmacist until notified by the board  
24 in writing that he may resume practice: failure to timely complete all of the steps required for  
25 enrollment/registration with the drug testing vendor, including making arrangements for payment;  
26 failure to timely commence drug testing protocols; failure to contact the drug testing vendor as  
27 required to determine testing date(s); failure to test as required; failure to timely supply  
28 documentation demonstrating that a detected substance was taken pursuant to a legitimate

1 prescription issued as a necessary part of treatment; and/or detection through testing of alcohol, or  
2 of an illicit drug, or of a controlled substance or dangerous drug absent documentation that the  
3 detected substance was taken pursuant to a legitimate prescription and a necessary treatment. In  
4 the event of a suspension ordered after detection through testing of alcohol, an illicit drug, or of a  
5 controlled substance or dangerous drug absent documentation that the detected substance was  
6 taken pursuant to a legitimate prescription and a necessary treatment, the board or its designee  
7 shall inform respondent of the suspension and inform him to immediately leave work, and shall  
8 notify respondent's employer(s) and work site monitor(s) of the suspension.

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

18       During any such suspension, respondent shall not engage in any activity that requires the  
19 professional judgment of and/or licensure as a pharmacist. Respondent shall not direct or control  
20 any aspect of the practice of pharmacy, or of the manufacturing, distributing, wholesaling, or  
21 retailing of dangerous drugs and/or dangerous devices.

22       Failure to comply with any such suspension shall be considered a violation of probation.  
23 Failure to comply with any requirement or deadline stated by this term shall be considered a  
24 violation of probation.

#### 25       17. **Notification of Departure**

26       Prior to leaving the probationary geographic area designated by the board or its designee for  
27 a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in

28       ///



1 writing of the dates of departure and return. Failure to comply with this provision shall be  
2 considered a violation of probation.

3 **18. Abstain from Drugs and Alcohol**

4 Respondent shall completely abstain from the possession or use of alcohol, controlled  
5 substances, illicit drugs, dangerous drugs and/or dangerous devices, or their associated  
6 paraphernalia, except when possessed or used pursuant to a legitimate prescription issued as a  
7 necessary part of treatment. Respondent shall ensure that he is not in the same physical location  
8 as individuals who are using illicit substances even if respondent is not personally ingesting the  
9 drugs. Any possession or use of alcohol, dangerous drugs and/or dangerous devices or controlled  
10 substances, or their associated paraphernalia for which a legitimate prescription has not been  
11 issued as a necessary part of treatment, or any physical proximity to persons using illicit  
12 substances, shall be considered a violation of probation.

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

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

1 by the approved practitioner, respondent shall notify the board or its designee immediately and,  
2 within thirty (30) days of ceasing supervision, submit the name of a replacement physician, nurse  
3 practitioner, physician assistant, or psychiatrist of respondent's choice to the board or its designee  
4 for its prior approval. Failure to timely submit the selected practitioner or replacement  
5 practitioner to the board or its designee for approval, or to ensure the required quarterly reporting  
6 thereby, shall be considered a violation of probation.

7       If at any time an approved practitioner determines that respondent is unable to practice  
8 safely or independently as a pharmacist, the practitioner shall notify the board or its designee  
9 immediately by telephone and follow up by written letter within three (3) working days. Upon  
10 notification from the board or its designee of this determination, respondent shall be  
11 automatically suspended and shall not resume practice as a pharmacist until notified by the board  
12 or its designee that practice may be resumed.

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

23       During any suspension, respondent shall not engage in any activity that requires the  
24 professional judgment and/or licensure as a pharmacist. Respondent shall not direct or control  
25 any aspect of the practice of pharmacy or of the manufacturing, distributing, wholesaling, or  
26 retailing of dangerous drugs and/or dangerous devices or controlled substances.

27       Failure to comply with any requirement or deadline stated by this term shall be considered a  
28 violation of probation.

1           **20. Work Site Monitor**

2           Within ten (10) days of the effective date of this decision, respondent shall identify a work  
3 site monitor, for prior approval by the board or its designee, who shall be responsible for  
4 supervising respondent during working hours. Respondent shall be responsible for ensuring that  
5 the work site monitor reports in writing to the board monthly or on another schedule as directed  
6 by the board or its designee. Should the designated work site monitor suspect at any time during  
7 the probationary period that respondent has abused alcohol or drugs, he or she shall notify the  
8 board immediately.

9           In the event of suspected abuse, the monitor shall make at least oral notification within one  
10 (1) business day of the occurrence, and shall be followed by written notification within two (2)  
11 business days of the occurrence. If, for any reason, including change of employment, respondent  
12 is no longer able to be monitored by the approved work site monitor, within ten (10) days  
13 respondent shall designate a new work site monitor for approval by the board or its designee.  
14 Failure to timely identify an acceptable initial or replacement work site monitor, or to ensure  
15 monthly reports are submitted to the board by the monitor, shall be considered a violation of  
16 probation.

17           Within thirty (30) days of being approved by the board or its designee, the work site  
18 monitor shall sign an affirmation that he or she has reviewed the terms and conditions of  
19 respondent's disciplinary order and agrees to monitor respondent. The work site monitor shall at  
20 least:

- 21           1) Have regular face-to-face contact with respondent in the work environment, at least  
22 once per week or with greater frequency if required by the board or its designee;  
23           2) Interview other staff in the office regarding respondent's behavior, if applicable; and  
24           3) Review respondent's work attendance.

25           The written reports submitted to the board or its designee by the work site monitor shall  
26 include at least the following information: respondent's name and license number; the monitor's  
27 name, license number (if applicable) and work site location; the date(s) the monitor had face-to-  
28 face contact with respondent; the staff interviewed, if applicable; an attendance report; notes on

1 any changes in respondent's behavior or personal habits; notes on any indicators that may lead to  
2 substance abuse; and the work site monitor's signature.

3 Respondent shall complete the required consent forms and sign an agreement with the work  
4 site monitor and the board to allow the board to communicate with the work site monitor.

5 **21. Ethics Course**

6 Within sixty (60) calendar days of the effective date of this decision, respondent shall enroll  
7 in a course in ethics, at respondent's expense, approved in advance by the board or its designee  
8 that complies with Title 16 California Code of Regulations section 1773.5. Respondent shall  
9 provide proof of enrollment upon request. Within five (5) days of completion, respondent shall  
10 submit a copy of the certificate of completion to the board or its designee. Failure to timely enroll  
11 in an approved ethics course, to initiate the course during the first year of probation, to  
12 successfully complete it before the end of the second year of probation, or to timely submit proof  
13 of completion to the board or its designee, shall be considered a violation of probation.

14 **22. Supervised Practice**

15 Within thirty (30) days of the effective date of this decision, respondent shall submit to the  
16 Pharmacists Recovery Program (PRP) described in Condition No. 15, for prior approval, the  
17 name of a pharmacist by and not on probation with the board, to serve as respondent's practice  
18 supervisor. As part of the documentation submitted, respondent shall cause the proposed practice  
19 supervisor to report to the PRP in writing acknowledging that he or she has read the decision in  
20 case number 6370, and is familiar with the terms and conditions imposed thereby, including the  
21 level of supervision required. The level of supervision required will be determined by the PRP.  
22 The level of supervision required will be communicated to the respondent on or before the  
23 effective date of this decision and shall be one of the following:

24 Continuous – At least 75% of a work week

25 Substantial - At least 50% of a work week

26 Partial - At least 25% of a work week

27 Daily Review - Supervisor's review of probationer's daily activities within 24 hours  
28

1 Respondent may practice only under the required level of supervision by an approved  
2 practice supervisor. If, for any reason, including change of employment, respondent is no longer  
3 supervised at the required level by an approved practice supervisor, within ten (10) days of this  
4 change in supervision respondent shall submit to the PRP, for prior approval, the name of a  
5 pharmacist licensed by and not on probation with the board, to serve as respondent's replacement  
6 practice supervisor. As part of the documentation submitted, respondent shall cause the proposed  
7 replacement practice supervisor to report to the PRP in writing acknowledging that he or she has  
8 read the decision in case number 6370, and is familiar with the terms and conditions imposed  
9 thereby, including the level of supervision required.

10 Any of the following shall result in the automatic suspension of practice by a respondent  
11 and shall be considered a violation of probation:

12 Failure to nominate an initial practice supervisor, and to have that practice supervisor report  
13 to the PRP in writing acknowledging the decision, terms and conditions, and supervision level,  
14 within thirty (30) days;

15 Failure to nominate a replacement practice supervisor, and to have that practice supervisor  
16 report to the PRP in writing acknowledging the decision, terms and conditions, and supervision  
17 level, within ten (10) days;

18 Practicing in the absence of an approved practice supervisor beyond the initial or  
19 replacement nomination period; or

20 Any failure to adhere to the required level of supervision.

21 Respondent shall not resume practice until notified in writing by the board or its designee.

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

1 or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or  
2 dangerous devices or controlled substances.

3 During any suspension, respondent shall not engage in any activity that requires the  
4 professional judgment and/or licensure of a pharmacist. Respondent shall not direct or control  
5 any aspect of the practice of pharmacy or of the manufacture, distribution, wholesaling, or  
6 retailing of dangerous drugs and/or dangerous devices or controlled substances.

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


8 **23. No Ownership or Management of Licensed Premises**

9 Respondent shall not own, have any legal or beneficial interest in, nor serve as a manager,  
10 administrator, member, officer, director, trustee, associate, or partner of any business, firm,  
11 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell  
12 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)  
13 days following the effective date of this decision and shall immediately thereafter provide written  
14 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide  
15 documentation thereof shall be considered a violation of probation.

16 ACCEPTANCE

17 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
18 discussed it with my attorney, Adam B. Brown. I understand the stipulation and the effect it will  
19 have on my Intern Pharmacist Registration and my Pharmacist License. I enter into this  
20 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree  
21 to be bound by the Decision and Order of the Board of Pharmacy.

22  
23 DATED: 11-26-18

  
24 HUNG DUY NGUYEN  
Respondent


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I have read and fully discussed with Respondent Hung Duy Nguyen the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.

I approve its form and content.

DATED: 11-26-18

  
ADAM B. BROWN  
*Attorney for Respondent*

ENDORSEMENT

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

Dated:

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
ARMANDO ZAMBRANO  
Supervising Deputy Attorney General

WILLIAM D. GARDNER  
Deputy Attorney General  
*Attorneys for Complainant*

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


DATED: \_\_\_\_\_  
ADAM B. BROWN  
*Attorney for Respondent*

ENDORSEMENT

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

Dated: *11/26/18*

Respectfully submitted,  
XAVIER BECERRA  
Attorney General of California  
ARMANDO ZAMBRANO  
Supervising Deputy Attorney General

  
WILLIAM D. GARDNER  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 6356**

1 XAVIER BECERRA  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Assistant Attorney General  
3 SHAWN P. COOK  
Supervising Deputy Attorney General  
4 State Bar No. 117851  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 269-6291  
6 Facsimile: (213) 897-2809  
*Attorneys for Complainant*

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

10 In the Matter of the Accusation Against:

Case No. 6356

11 **HUNG DUY NGUYEN**  
12 209 E. Commonwealth Ave., Apt. B  
13 Alhambra, CA 91801

**A C C U S A T I O N**

14 Intern Pharmacist Registration No. INT 32061

15 Respondent.

16  
17  
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about September 4, 2013, the Board issued Intern Pharmacist Registration  
23 Number INT 32061 to Hung Duy Nguyen (Respondent). The Intern Pharmacist Registration was  
24 in full force and effect at all times relevant to the charges brought herein and will expire on May  
25 31, 2018, unless renewed.

26 **JURISDICTION AND STATUTORY PROVISIONS**

27 3. Section 4300 of the Code states:

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

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

4 (1) Suspending judgment.

5 (2) Placing him or her upon probation.

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

8 (4) Revoking his or her license.

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

11 (c) The board may refuse a license to any applicant guilty of  
12 unprofessional conduct. The board may, in its sole discretion, issue a probationary  
13 license to any applicant for a license who is guilty of unprofessional conduct and who  
14 has met all other requirements for licensure. The board may issue the license subject  
15 to any terms or conditions not contrary to public policy, including, but not limited to,  
16 the following:

17 (1) Medical or psychiatric evaluation.

18 (2) Continuing medical or psychiatric treatment.

19 (3) Restriction of type or circumstances of practice.

20 (4) Continuing participation in a board-approved rehabilitation program.

21 (5) Abstention from the use of alcohol or drugs.

22 (6) Random fluid testing for alcohol or drugs.

23 (7) Compliance with laws and regulations governing the practice of  
24 pharmacy.

25 (d) The board may initiate disciplinary proceedings to revoke or suspend  
26 any probationary certificate of licensure for any violation of the terms and conditions  
27 of probation. Upon satisfactory completion of probation, the board shall convert the  
28 probationary certificate to a regular certificate, free of conditions.

(e) The proceedings under this article shall be conducted in accordance  
with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the  
Government Code, and the board shall have all the powers granted therein. The  
action shall be final, except that the propriety of the action is subject to review by the  
superior court pursuant to Section 1094.5 of the Code of Civil Procedure.”

4. Section 4300.1 of the Code 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 a 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

1 a decision suspending or revoking the license.”

2 5. Section 490 of the Code states:

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

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

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

20 (d) The Legislature hereby finds and declares that the application of this  
21 section has been made unclear by the holding in *Petropoulos v. Department of Real  
22 Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a  
23 significant number of statutes and regulations in question, resulting in potential harm  
24 to the consumers of California from licensees who have been convicted of crimes.  
25 Therefore, the Legislature finds and declares that this section establishes an  
26 independent basis for a board to impose discipline upon a licensee, and that the  
27 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session  
28 do not constitute a change to, but rather are declaratory of, existing law.”

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

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

...

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

...

(l) The conviction of a crime substantially related to the qualifications,  
functions, and duties of a licensee under this chapter. The record of conviction of a  
violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
States Code regulating controlled substances or of a violation of the statutes of this  
state regulating controlled substances or dangerous drugs shall be conclusive

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

### 8 REGULATORY PROVISIONS

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

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

### 14 COST RECOVERY

15 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
16 administrative law judge to direct a licentiate found to have committed a violation or violations of  
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
18 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
19 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
20 included in a stipulated settlement.

### 21 FIRST CAUSE FOR DISCIPLINE

#### 22 (Conviction of a Substantially Related Crime)

23 9. Respondent is subject to disciplinary action under section 490 and section 4301,  
24 subdivision (l) of the Code, in conjunction with California Code of Regulations, title 16, section  
25 1770, in that Respondent was convicted of a crime substantially related to the qualifications,  
26 functions, or duties of a licensed intern pharmacist which to a substantial degree evidences his  
27 present or potential unfitness to practice in a manner consistent with the public health, safety, or  
28 welfare, as follows:

1 10. On or about August 29, 2017, Respondent was convicted of one misdemeanor count  
2 of violating Vehicle Code section 23152(b) [driving with a BAC<sup>1</sup> of .08% or more] with an  
3 enhancement pursuant to Vehicle Code section 23540 [second DUI<sup>2</sup> within 10 years] in the  
4 criminal proceeding entitled *The People of the State of California v. Hung D. Nguyen* (Super. Ct.  
5 Los Angeles County, 2017, No. 7ES01451). The court ordered Respondent to serve 96 hours in  
6 jail and placed Respondent on probation for 3 years, with terms and conditions. The  
7 circumstances underlying the conviction are that on or about February 4, 2017, law enforcement  
8 officers initiated a traffic stop on a vehicle that was traveling at a low rate of speed and weaving  
9 in and out of lanes. When officers contacted Respondent, they observed that he displayed the  
10 objective signs and symptoms of alcohol intoxication, including red and watery eyes, slow and  
11 lethargic movements, and an odor of alcohol emitting from his breath and person. Respondent  
12 submitted to a breath test resulting in a BAC of .126% and .131%.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Dangerous Use of Alcohol)**

15 11. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the  
16 Code, on the grounds of unprofessional conduct, in that on or about February 4, 2017,  
17 Respondent used alcoholic beverages to the extent or in a manner as to be dangerous or injurious  
18 to himself, others, and the public. The conduct is described in more particularity in paragraph 10  
19 above, inclusive, and hereby incorporated by reference.

20 **DISCIPLINARY CONSIDERATION**

21 12. To determine the degree of discipline, if any, Complainant alleges that on or about  
22 April 21, 2016, the Board issued Citation Number CI201568692 to Respondent in the amount of  
23 \$800 for violating section 4301, subdivisions (h) and (l) of the Code. Respondent complied with  
24 the citation. The circumstances underlying the citation are that on or about April 4, 2016,  
25 Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152(b)  
26 [driving with a BAC of .08% or more] in the criminal proceeding entitled *The People of the State*

27 \_\_\_\_\_  
28 <sup>1</sup> Blood alcohol concentration.  
<sup>2</sup> Driving under the influence.

1 of *California v. Hung Duy Nguyen* (Super. Ct. Los Angeles County, 2016, No. 6MN00677). The  
2 court ordered Respondent to serve one (1) day in jail and placed Respondent on probation for 36  
3 months, with terms and conditions. The circumstances underlying the conviction are that on or  
4 about January 6, 2016, law enforcement officers initiated a traffic stop on a vehicle that crossed  
5 lanes and nearly collided with the law enforcement vehicle. When officers contacted Respondent,  
6 they observed that he displayed the objective signs and symptoms of alcohol intoxication,  
7 including bloodshot and watery eyes, slurred speech, and a strong odor of alcohol was emitting  
8 from the vehicle. Respondent submitted to a breath test resulting in a BAC of .116% and .118%.

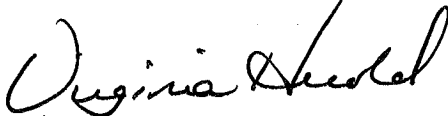
9 **PRAYER**

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

- 12 1. Revoking or suspending Intern Pharmacist Registration Number INT 32061, issued to  
13 Hung Duy Nguyen;
- 14 2. Ordering Hung Duy Nguyen to pay the Board of Pharmacy the reasonable costs of the  
15 investigation and enforcement of this case, pursuant to Business and Professions Code section  
16 125.3; and,
- 17 3. Taking such other and further action as deemed necessary and proper.

18  
19  
20 DATED: \_\_\_\_\_

4/28/18



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

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**Exhibit B**

**Statement of Issues No. 6370**



1 XAVIER BECERRA  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Assistant Attorney General  
3 SHAWN P. COOK  
Supervising Deputy Attorney General  
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300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 269-6291  
6 Facsimile: (213) 897-2809  
*Attorneys for Complainant*

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

10 In the Matter of the Statement of Issues  
11 Against:

Case No. 6370

12 **HUNG DUY NGUYEN**

**STATEMENT OF ISSUES**

13 Pharmacist License Applicant

14 Respondent.

15  
16  
17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about June 2, 2017, the Board received a Pharmacist Examination and  
23 Licensure Application from Hung Duy Nguyen (Respondent). On or about May 8, 2017,  
24 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and  
25 representations in the application. On or about November 30, 2017, the Board denied  
26 Respondent's Pharmacist Examination and Licensure Application.

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1 **JURISDICTION AND STATUTORY PROVISIONS**

2 3. This Statement of Issues 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 4300, subdivision (c), of the Code states, in relevant part, that the board may  
6 refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole  
7 discretion, issue a probationary license to any applicant for a license who is guilty of  
8 unprofessional conduct and who has met all other requirements for licensure.

9 5. Section 480 of the Code states, in pertinent part:

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

12 (1) Been convicted of a crime. A conviction within the meaning of this  
13 section means a plea or verdict of guilty or a conviction following a plea of nolo  
14 contendere. Any action that a board is permitted to take following the establishment  
15 of a conviction may be taken when the time for appeal has elapsed, or the judgment  
16 of conviction has been affirmed on appeal, or when an order granting probation is  
17 made suspending the imposition of sentence, irrespective of a subsequent order under  
18 the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

19 ...

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

22 (B) The board may deny a license pursuant to this subdivision only if the  
23 crime or act is substantially related to the qualifications, functions, or duties of the  
24 business or profession for which application is made.”

25 6. Section 4301 of the Code states:

26 “The board shall take action against any holder of a license who is guilty  
27 of unprofessional conduct or whose license has been issued by mistake.

28 ...

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

...

(k) The conviction of more than one misdemeanor or any felony  
involving the use, consumption, or self-administration of any dangerous drug or

1 alcoholic beverage, or any combination of those substances.

2 ...

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

22 **REGULATORY PROVISIONS**

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

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

**FIRST CAUSE FOR DENIAL OF APPLICATION**

**(Conviction of a Substantially Related Crime)**

8. Respondent’s application is subject to denial under sections 480, subdivision (a)(1),  
and 4301, subdivision (l) of the Code, in conjunction with California Code of Regulations, title  
16, section 1770, in that Respondent was convicted of crimes substantially related to the  
qualifications, functions, or duties of a licensed pharmacist, which to a substantial degree  
evidences his present or potential unfitness to practice in a manner consistent with the public  
health, safety, or welfare, as follows:

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1           9.    On or about April 4, 2016, Respondent was convicted of one misdemeanor count of  
2 violating Vehicle Code section 23152(b) [driving with a BAC<sup>1</sup> of .08% or more] in the criminal  
3 proceeding entitled *The People of the State of California v. Hung Duy Nguyen* (Super. Ct. Los  
4 Angeles County, 2016, No. 6MN00677). The court ordered Respondent to serve one (1) day in  
5 jail and placed Respondent on probation for 36 months, with terms and conditions. The  
6 circumstances underlying the conviction are that on or about January 6, 2016, law enforcement  
7 officers initiated a traffic stop on a vehicle that crossed lanes and nearly collided with the law  
8 enforcement vehicle. When officers contacted Respondent, they observed that he displayed the  
9 objective signs and symptoms of alcohol intoxication, including bloodshot and watery eyes,  
10 slurred speech, and a strong odor of alcohol was emitting from the vehicle. Respondent submitted  
11 to a breath test resulting in a BAC of .116% and .118%.

12           10. On or about August 29, 2017, Respondent was convicted of one misdemeanor count  
13 of violating Vehicle Code section 23152(b) [driving with a BAC of .08% or more] with an  
14 enhancement pursuant to Vehicle Code section 23540 [second DUI<sup>2</sup> within 10 years] in the  
15 criminal proceeding entitled *The People of the State of California v. Hung D. Nguyen* (Super. Ct.  
16 Los Angeles County, 2017, No. 7ES01451). The court ordered Respondent to serve 96 hours in  
17 jail and placed Respondent on probation for 3 years, with terms and conditions. The  
18 circumstances underlying the conviction are that on or about February 4, 2017, law enforcement  
19 officers initiated a traffic stop on a vehicle that was traveling at a low rate of speed and weaving  
20 in and out of lanes. When officers contacted Respondent, they observed that he displayed the  
21 objective signs and symptoms of alcohol intoxication, including red and watery eyes, slow and  
22 lethargic movements, and an odor of alcohol emitting from his breath and person. Respondent  
23 submitted to a breath test resulting in a BAC of .126% and .131%.

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27 \_\_\_\_\_  
28           <sup>1</sup> Blood alcohol concentration.

<sup>2</sup> Driving under the influence.

1 **SECOND CAUSE FOR DENIAL OF APPLICATION**

2 **(Acts That Would Be Grounds for Discipline If Done by a Licensee)**

3 11. Respondent's application for a pharmacist license is subject to denial under Code  
4 sections 480, subdivisions (a)(3)(A) and (a)(3)(B), in that Respondent committed acts that, if  
5 done by a licensed pharmacist, would be grounds for suspension or revocation of the license, as  
6 follows:

- 7 a. Respondent used alcoholic beverages to the extent or in a manner as to be dangerous  
8 or injurious to himself, others, or the public, in violation of section 4301,  
9 subdivision (h) of the Code. The conduct is described in more particularity in  
10 paragraphs 9 and 10 above, inclusive, and hereby incorporated by reference.
- 11 b. Respondent was convicted of crimes involving the use, consumption, or self-  
12 administration of alcoholic beverages, in violation of section 4301, subdivision (k)  
13 of the Code. The convictions are described in more particularity in paragraphs 9  
14 and 10 above, inclusive, and hereby incorporated by reference.

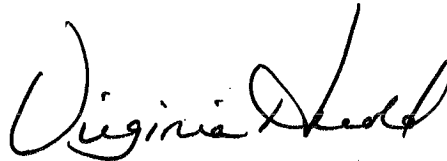
15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
17 Statement of Issues and that, following the hearing, the Board of Pharmacy issue a decision:

- 18 1. Denying the application of Hung Duy Nguyen for a Pharmacist License; and
- 19 2. Taking such other and further action as deemed necessary and proper.

20  
21  
22 DATED: \_\_\_\_\_

4/28/18



23 VIRGINIA HEROLD  
24 Executive Officer  
25 Board of Pharmacy  
26 Department of Consumer Affairs  
27 State of California  
28 *Complainant*

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