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

12 In the Matter of the Statement of Issues Against:

Case No. 3241

13 PETER CHAU HOANG MAI
6041 Doyle Drive
14 Huntington Beach, CA 92647

STATEMENT OF ISSUES

15 Respondent.
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18 Complainant alleges:

19 PARTIES

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

23 2. On or about July 13, 2007, the Board of Pharmacy, Department of
24 Consumer Affairs received an application for a Pharmacist License from Peter Chau Hoang Mai
25 (Respondent). On or about May 15, 2007, Peter Chau Hoang Mai certified under penalty of
26 perjury to the truthfulness of all statements, answers, and representations in the application. The
27 Board denied the application on June 3, 2008.

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1 LICENSE HISTORY

2 3. On August 28, 1986, the Board of Pharmacy (the Board), issued Original
3 Pharmacist License No. RPH 40408 to Peter Chau Hoang Mai. On March 30, 1990, the Board
4 issued Pharmacy Permit No. PHY-36296 to Respondent to do business as M.N. Pharmacy.

5 4. On January 19, 2000, a First Amended Accusation in Case No. 1824 was
6 filed against Respondent and his pharmacy for unprofessional conduct.

7 5. The First Amended Accusation in Case No. 1824 resulted in Respondent's
8 surrender of both his pharmacist license and pharmacy permit. The Decision of the Board
9 adopting the stipulated surrender was issued on May 10, 2000 and became effective on June 9,
10 2000.

11 6. On March 10, 2004, the Board of Pharmacy received an application for a
12 pharmacist license from Peter Chau Hoang Mai (Respondent.) The Board denied the application
13 for licensure on September 2, 2004.

14 7. Statement of Issues Case No. 2820 was filed on January 31, 2005
15 following Respondent's appeal of the denial of his application for licensure on September 2,
16 2004. An administration hearing in Statement of Issues Case No. 2820 was held before
17 Administrative Law Judge Eric Sawyer on May 13, 2005. Following the hearing, the Board
18 issued a Decision and Order denying Respondent's application for a pharmacist's license. The
19 decision became effective on September 16, 2005.

20 JURISDICTION

21 10. This Statement of Issues is brought before the Board under the authority of
22 the following laws. All section references are to the Business and Professions Code unless
23 otherwise indicated.

24 11. Code section 4300 states, in pertinent part:

25 (c) The board may refuse a license to any applicant guilty of unprofessional
26 conduct. The board may, in its sole discretion, issue a probationary license to any
27 applicant for a license who is guilty of unprofessional conduct and who has met all other
28 requirements for licensure. The board may issue the license subject to any terms or
conditions not contrary to public policy . . .

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15. Section 493 of the Code states, in pertinent part:

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

16. California Code of Regulations, Title 16, section 1769 states, in pertinent part:

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

- (1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

17. California Code of Regulations, Title 16, section 1770 states:

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

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1 **FACTS**

2 18. Respondent was previously disciplined in Accusation Case No. 1824
3 which resulted in Respondent's surrender of both his pharmacist license and pharmacy permit.
4 The Decision of the Board adopting the stipulated surrender was issued on May 10, 2000 and
5 became effective on June 9, 2000.

6 19. The Decision in Accusation Case No. 1824 stated, in pertinent part, as
7 follows:

8 7. RESPONDENT further agrees that with the adoption by the
9 Board of his license and permit surrenders, RESPONDENT may not petition the
10 Board for reinstatement of the surrendered license and/or permit. Should
11 RESPONDENT at any time after this surrender ever reapply to the Board for
12 licensure as a Pharmacist, RESPONDENT must meet all current requirements for
the licensure including, but not limited to, filing a current application, meeting all
current educational requirements, and taking and passing any and all written
examinations required of new applicants, including, but not limited to, the Law
exam.

13 9. RESPONDENT understands that should he ever reapply for
14 licensure as a Pharmacist, or should he ever apply for any other licensure issued
15 by the Board, for the purpose of any Statement of Issues or other proceeding
16 seeking to deny such application or reapplication, the BOARD shall deem that
each of the following allegations and also the following Determination of Issues
from the First Amended Accusation in case no. 1824 to be true and correct and
admitted by RESPONDENT:

17 **Admissions Deemed True on Reapplication**

18 **Criminal Conviction for Possession of Cocaine**

19 RESPONDENT has been convicted of a crime substantially related
20 to the qualifications, functions and duties of a licensee, in that on June 18, 1997,
21 in the Municipal Court of Long Beach Judicial District, Los Angeles County, in a
22 case entitled People v. Hoang Chau Peter Mai, no. NA032429, RESPONDENT
was convicted, on his plea of nolo contendere, of a violation of Health and Safety
Code section 11350, subdivision (a) [possession of cocaine.]

23 **Audit Shortage - Failure to Maintain Records and a Current Inventory**

24 RESPONDENT failed to keep a complete, accurate and current
25 inventory or complete accountability of a controlled substance and dangerous
drug, by reason of the following facts:

26 **First Audit - 1992 -93**

27 (1) Commencing on December 9, 1993, Inspectors from the
28 Board performed an audit of RESPONDENT PHARMACY concerning certain
controlled substances, including Tyl. Cod. #4 and Emp. Cod. #4. The period
covered by said audit was from March 9, 1992 to December 9, 1993 (hereinafter

1 "first audit period.") During the period, RESPONDENT PHARMACY acquired
2 or purchased and disposed by prescription or sale controlled substances, including
Codeine #4. Said audit shall hereinafter be referred to as "First Audit."

3 (2) Upon request by the Board Inspectors, RESPONDENT on
4 behalf of RESPONDENT PHARMACY could not produce records of the
5 acquisition of Codeine #4 during the audit period, as required by Code Section
4081.

6 (3) The audit totals were as follows:

<u>AUDIT STEP</u>	<u>CODEINE #4</u>
Beginning Inventory (March 9, 1992)	3,251
Acquisitions During Audit Period	102,800
Subtotal	106,051
Less Dispositions (rxs, refills)	49,555
Amount to be Accounted for	56,496
Less Current Inventory (December 9, 1993)	1,670
Shortage	54,826
Percent Shortage	97%

19 (4) RESPONDENT and RESPONDENT PHARMACY, and each
20 of them, failed to completely and accurately account for the above-referenced
controlled substances and dangerous drugs during the first audit period.

21 **Sale of Controlled Substances**

22 (1) During the second drug audit, March 14, 1994 to March 24,
23 1995, RESPONDENTS dispensed a total of 123 prescriptions for Codeine #4. Of
such prescriptions, 123, or 100% were issued by Gary B. Humphrey, M.D.

24 (2) Dr. Humphrey's license to practice medicine was revoked by
25 the Medical Board of California on February 27, 1994, and RESPONDENT and
RESPONDENT PHARMACY were aware of this fact.

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1 **Illegal Distribution of Drug Samples**

2 On May 6, 1997, approximately 578 separate manufacturer's
3 sample containers of dangerous drugs and controlled substances were found on
4 the premises at RESPONDENT PHARMACY. By being stored on the premises,
5 these samples were deemed available for sale.

6 **Determination of Issues - Deemed Admitted if Reapplication**

7 RESPONDENT and also RESPONDENT PHARMACY are
8 subject to discipline by the Board pursuant to Code sections 4300, subdivisions
9 (a) and (b) and 4301, for the following unprofessional conduct:

10 **Criminal Conviction for Possession of Cocaine**

11 As defined in section 4301, subdivision (1) and 490 of that Code,
12 in that Respondent Mai has been convicted of a crime substantially related to the
13 qualifications, functions, or duties of a licensee, in violation of law, as set forth
14 . . . above.

15 **Audit Shortage - Failure to Maintain Records and a Current Inventory**

16 As defined in section 4301, subdivisions (j) and (o) of the Code, by
17 reason of violations of section 4081, subdivisions (a) and (b) of the Code, as
18 interpreted by State Regulation section 1718; violations of Health and Safety
19 Code section 11205 and 11179; and violations of 21 U.S.C. section 827,
20 subdivisions (a)(3) and 21 C.F.R. section 1304.04, subdivision (h), in that
21 RESPONDENTS, and each of them, failed to keep a complete, accurate and
22 current inventory of the said controlled substances and dangerous drugs, as set
23 forth . . . above.

24 **Sale of Controlled Substances**

25 As defined in Code section 4301, subdivisions (j) and (o), by
26 reason a violation of Health and Safety Code section 11352, in that each
27 RESPONDENT sold controlled substances which were narcotics, as set forth . . .
28 above.

Illegal Distribution of Drug Samples

 As defined in Code section 4301, subdivision (o), in that each
RESPONDENT has violated, directly or indirectly, federal regulations governing
pharmacy; in that they have violated Title 21, Code of Federal Regulations,
section 503, subdivisions (d)(2)(A) and (d)(3)(A) in conjunction with section 503,
subdivision (c)(1) for distribution of drug samples as set forth . . . above.

 RESPONDENT understands and agrees that he owes no costs now, but
if he ever reapplies to the Board for a license as a Pharmacist, the costs incurred
by Complainant in the amount of \$5,000 will become due and owing and need to
be paid in installments during probation if his reapplication is granted (unless, at
the time of reapplication RESPONDENT and Complainant negotiate and agree
upon a lesser amount which is approved at the time by the Board.)

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1 Respondent appealed the denial and the matter of the Statement of Issues Case No. 2820 went to
2 hearing on May 13, 2005. The Decision to affirm the denial of Respondent's application for
3 pharmacist license became effective September 16, 2005.

4 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

5 **(Acts as Grounds for Discipline of Licentiate)**

6 23. Respondent's application is subject to denial under section 480(a)(3) in
7 that Respondent's illegal and/or criminal acts or acts in violation of pharmacy laws and
8 regulations set forth above constituted acts which would constitute cause for discipline and, in
9 fact, did result in the surrender of his pharmacist license and pharmacy permit, as is detailed in
10 paragraph 19, above.

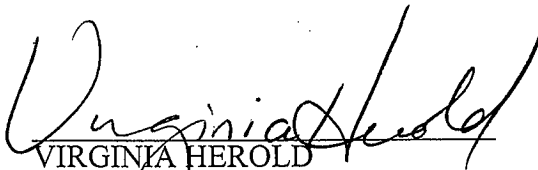
11 24. Respondent's application is subject to denial under section 480(a)(3) in
12 that failure to disclose the denial of his March 10, 2004 application for a pharmacist's license
13 constitutes an act which if done by a licentiate would constitute cause for discipline pursuant to
14 Code section 4300.

15 **PRAYER**

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

- 18 1. Denying the application of Peter Chau Hoang Mai for a Pharmacist
19 License;
20 2. Taking such other and further action as deemed necessary and proper.

21 DATED: 4/10/09

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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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