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

14 In the Matter of the Statement of Issues Against:
TRI MINH DUONG
15 9315 Bolsa Avenue, #217
Westminster, CA 92683
16 Pharmacy Technician Applicant
17 Respondent.
18

Case No. 3195
STATEMENT OF ISSUES

19
20 Complainant alleges:

21 PARTIES

- 22 1. Virginia K. Herold (Complainant) brings this Statement of Issues solely in
23 her official capacity as the Executive Officer of the Board of Pharmacy.
24 2. On or about March 20, 2007, the Board of Pharmacy received an
25 application for a Pharmacy Technician Registration from Tri Minh Duong (Respondent). In or
26 about March 2007, Respondent signed, wrote the date, April 19, 2007, and certified under
27 penalty of perjury to the truthfulness of all statements, answers, and representations in the
28 application. The Board denied the application on February 26, 2008.

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STATUTES

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

4. Section 475 of the Code states:

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

.....

(2) Conviction of a crime.

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

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

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

5. Section 480 of the Code states:

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

(1) Been convicted of a crime. 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 which 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.

(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

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

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

1 (b) Notwithstanding any other provision of this code, no person shall be
2 denied a license solely on the basis that he has been convicted of a felony if he has
3 obtained a certificate of rehabilitation under Section 4852.01 and following of the
4 Penal Code or that he has been convicted of a misdemeanor if he has met all
5 applicable requirements of the criteria of rehabilitation developed by the board to
6 evaluate the rehabilitation of a person when considering the denial of a license
7 under subdivision (a) of Section 482.

8 (c) A board may deny a license regulated by this code on the ground that
9 the applicant knowingly made a false statement of fact required to be revealed in
10 the application for such license.

11 6. Section 482 of the Code states:

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

14 (a) Considering the denial of a license by the board under Section 480; or

15 (b) Considering suspension or revocation of a license under Section 490.

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

18 7. Section 490 of the Code states, in pertinent part:

19 A board may suspend or revoke a license on the ground that the licensee
20 has been convicted of a crime, if the crime is substantially related to the
21 qualifications, functions, or duties of the business or profession for which the
22 license was issued. A conviction within the meaning of this section means a plea
23 or verdict of guilty or a conviction following a plea of nolo contendere. Any
24 action which a board is permitted to take following the establishment of a
25 conviction may be taken when the time for appeal has elapsed, or the judgment of
26 conviction has been affirmed on appeal, or when an order granting probation is
27 made suspending the imposition of sentence, irrespective of a subsequent order
28 under the provisions of Section 1203.4 of the Penal Code. . . .

8. Code section 493 states:

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

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

1 9. Code section 4202, subdivisions (c) and (d) governing applications
2 for registration as a Pharmacy Technicians, state:

3 (c) The board shall conduct a criminal background check of the applicant
4 to determine if an applicant has committed acts that would constitute grounds for
5 denial of registration, pursuant to this chapter or Chapter 2 (commencing with
6 section 480) of Division 1.5.

7 (d) The board may suspend or revoke any registration issued pursuant to
8 this section on any ground specified in Section 4301.

9 10. Section 4301 of the Code provides, in pertinent part, as follows:

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

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

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30 (q) Engaging in any conduct that subverts or attempts to subvert an
31 investigation of the board.
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REGULATIONS

11. 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.

12. California Code of Regulations, title 16, section 1769, subdivision b, states:

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

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

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COST RECOVERY

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

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FACTS

14. In or about April 2007, the Board conducted a criminal background check of Respondent, in accordance with Code section 4202, subdivision (c).

15. The Board's investigation of Respondent's criminal background indicated that on or about June 7, 2004, in Orange County Superior Court, Juvenile Division, in a case entitled *People v. Tri Minh Duong*, Respondent was committed to custody of the California

1 Youth Authority because he had, by his own admission, violated Penal Code section 245,
2 subdivision (a) (Aggravated Assault with Intent to Cause Great Bodily Harm).

3 a. The facts and circumstances surrounding Respondent's commitment are
4 that Respondent and two of his friends physically assaulted two high school students as they
5 walked home from school. One of the other assailants was Respondent's friend and had been
6 involved in a brief altercation with one of the victims earlier during the same week. Respondent
7 drove all three assailants around town in his car until they found their intended victims. A car
8 "club" anti-theft device, owned by Respondent, was used as a weapon on the victims during the
9 assault. The victims also reported brass knuckles being used by their assailants. The victims
10 suffered great bodily injury including, but not limited to, the following: a two inch laceration to
11 the corner of one victim's right eye and a large swollen bruise of the victim's forehead extending
12 from his hair-line down to his right eye; four lacerations varying in size from one and one-half
13 inches to three-quarters of an inch on the other victims head, two of these laceration were on the
14 back of his head, one just above his left ear, and one on the front of his head, just above his hair-
15 line; numerous scratches and abrasions to the victims' necks, arms, and chests.

16 b. Respondent stated to police officers at the time of his arrest that for the past
17 fourteen months he has been a close associate of the criminal street gang called "Hac Long Boys"
18 also known as "Black Dragons." Respondent requested, in order to protect his personal safety,
19 that he be placed in jail in a place away from his gang's known enemy gangs' members which he
20 identified as the Asian Vet Boys, Tiny Rascal Gang, Dragon Family Junior, and Asian Family
21 gangs.

22 c. Respondent was one month shy of eighteen years old when he assaulted the
23 high school students as alleged above. Respondent was eighteen years and one month old when
24 he was committed to the California Youth Authority (CYA).

25 16. The Board's investigation into Respondent's criminal background also
26 revealed that on or about January 3, 2007, Respondent was arrested for violation of Penal Code
27 section 12025, subdivision (a) (2), (Illegal Possession of a Concealed Weapon), and felony
28 criminal charges were filed against Respondent for same.

1 17. On or about on or about July 20, 2007, in a criminal proceeding
2 entitled *People v. Tri Minh Duong*, in Orange County Superior Court, Central District, Case
3 Number 07CF0117FA, Respondent was convicted, on his plea of guilty, of violating Penal Code
4 section 12021, subdivision (e) (Illegal Possession of Firearm, with Prior Juvenile Adjudication).

5 a. Respondent was sentenced to three (3) years formal probation, one
6 hundred eighty (180) days in the custody of Orange County Jail, fines and fees, warrantless
7 search of person and place, and to cooperate with his Probation Officer. Respondent's criminal
8 formal probation is scheduled for completion on July 19, 2010.

9 b. The circumstances of the crime are that on or about January 3, 2007,
10 Respondent's former boss at Baskin Robbins in Tustin California called for police assistance
11 because Respondent was inside the store and was waiting for him to arrive at the store.
12 Respondent's former boss had recently terminated Respondent's employment. He became
13 concerned about possible retribution by Respondent because after being terminated, Respondent
14 made an unusually high number of telephone calls to his cell phone and attempted to arrange a
15 face-to-face meeting to discuss Respondent's recent termination.

16 c. On or about January 3, 2007, Orange County Police Officers arrived at the
17 Baskin Robbins where Respondent was inside having a casual conversation with an employee.
18 The officers immediately noticed that Respondent appeared to be concealing a weapon under his
19 shirt. In fact, Respondent had a blue steel, 9 mm, Taurus, semi-automatic handgun concealed
20 under his shirt and stuck into the front of his pants' waistband. Respondent was immediately
21 arrested for illegal possession of a concealed weapon in violation of Penal Code section
22 12025(a), a felony.

23 18. Respondent never reported his June 20, 2007, felony conviction to the
24 Board, even though he knew that the Board was actively investigating his criminal background,
25 and the Board had specifically inquired about the pending criminal charge underlying the
26 conviction, as described below.

27 19. On or about May 2, 2007, the Board sent a letter to Respondent indicating
28 that his criminal background was being investigated. The letter requested Respondent to provide

1 a written explanation regarding the facts and circumstances underlying his June 7, 2004,
2 commitment to the California Youth Authority and describing his criminal sentence in the
3 matter. The Board also requested a written explanation regarding the facts and circumstances
4 underlying his arrest on January 3, 2007, and the resulting criminal charges filed against him.

5 20. On or about May 15, 2007, Respondent provided a written statement to the
6 Board regarding his California Youth Authority commitment on June 7, 2004, as follows: "One
7 day after school, some of my friends got into a fight with two other males while I was sitting in
8 my car near by. Afterwards me and my friends took off and the other two males call police.
9 Basically, I was guilty because I was watching the fight and did not do anything about it." In
10 fact, Respondent was directly involved in the fight in which serious injuries were inflicted upon
11 the victims, as alleged above in paragraph 15, which is incorporated herein by reference.

12 21. On or about May 15, 2007, Respondent also stated to the Board that he
13 was innocent of all pending criminal charges, and thereby indicated that he was not carrying
14 a concealed weapon when he was arrested on January 3, 2007. In fact, Respondent had a
15 9mm semi-automatic handgun concealed under his shirt and sticking into the front of his pants'
16 waistband, at the time of his arrest, as described above in paragraph 17 which is incorporated
17 herein by reference. He also possessed a magazine of bullets for the weapon.

18 **FIRST CAUSE FOR DENIAL OF APPLICATION**

19 **(7/20/07 Conviction: Illegal Possession of Handgun on 1/3/07)**

20 22. Respondents application for licensure is subject to denial under Business
21 and Professions Code sections 480, subdivisions (a)(1) and (a)(3), 490, and 4301, subdivision (1),
22 in that he was convicted of a crime substantially related to the duties, functions and qualifications
23 of a pharmacy technician, as described in paragraph 17 above, which is incorporated herein by
24 reference.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Unprofessional Conduct - Deceit)**

27 23. Respondent's application is subject to denial under Business and
28 professions Code sections 480, subdivisions (a)(2), and (a)(3), and section 4301, subdivision (f),

1 in that he was dishonest and deceitful when he provided false information to the Board in
2 response to a Board inquiry and investigation of Respondent's criminal background, by stating
3 false facts and circumstances underlying the assault with intent to cause great bodily injury upon
4 two high school students in 2004, as described above in paragraphs 15 and 20, which are
5 incorporated herein by reference.

6 **THIRD CAUSE FOR DENIAL OF APPLICATION**

7 **(Unprofessional Conduct- Attempted Subversion of Board Investigation)**

8 24. Respondent's application is subject to denial under Business and
9 professions Code sections 480, subdivision(a)(3), and section 4301, subdivision (q), in that he
10 attempted to subvert the Board's investigation into his criminal background by failing to notify
11 the Board of his felony criminal conviction when he knew the Board was actively investigating
12 his criminal convictions and the Board had specifically inquired regarding the pending criminal
13 charges and arrest underlying the conviction, as alleged above in paragraphs 16 through 21,
14 which are incorporated herein by reference.

15 25. Respondent's application is subject to denial under Business and
16 professions Code sections 480, subdivision(a)(3), and section 4301, subdivision (q), in that he
17 attempted to subvert the Board's investigation into his criminal background by providing false
18 information to the Board in response to the Board's specific inquiry and investigation of
19 Respondent's criminal background, in that he denied direct involvement in criminal conduct he
20 had previously admitted during court proceedings and been punished for committing, as
21 described above in paragraphs 15 and 20, which in incorporated herein by reference.

22 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

23 **(Unprofessional Conduct - Aggravated Assault with Intent to Cause Great Bodily Injury)**

24 26. Respondents application is subject to denial under Business and
25 Professions Code sections 4202 and 4301 in that, by his own admission, Respondent assaulted
26 two high school students with the intent to cause great bodily injury, on or about
27 March 29, 2004, as described above in paragraph 15, which is incorporated herein by reference.

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PRAYER

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

A. Denying the application of Tri Minh Duong for a registration as a Pharmacy Technician.

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

DATED: 11/21/08



VIRGINIA K. HEROLD
Executive Officer
Board of Pharmacy
State of California
Complainant