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

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

Case No. 3369

13 **VANNAPHA PHOUIPHANITH**  
14 **A.K.A. MIMI NGUYEN**  
8725 Morning Glory Way  
15 Elk Grove, Ca 95624

**STATEMENT OF ISSUES**

Respondent.

17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her  
20 official capacity as the Executive Officer of the Board of Pharmacy(Board), Department of  
21 Consumer Affairs.
- 22 2. On or about May 19, 2008, the Board of Pharmacy, Department of Consumer  
23 Affairs (Board) received an application for Registration as a Pharmacy Technician from  
24 Vannapha Phouiphanith, also known as Mimi Nguyen (Respondent). On or about September 10,  
25 2008, the Board received a second application from Respondent for Registration as an Intern  
26 Pharmacist. On or about May 15, 2008, and August 25, 2008, respectively, Vannapha  
27 Phouiphanith, also known as Mimi Nguyen certified under penalty of perjury to the truthfulness

1 of all statements, answers, and representations in the application. The Board denied both  
2 applications on January 14, 2009.

3 JURISDICTION

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

7 STATUTORY PROVISIONS

8 4. Section 477 of the Code states:

9 As used in this division:

10 (a) "Board" includes "bureau," "commission," "committee," "department,"  
11 "division," "examining committee," "program," and "agency."

12 (b) "License" includes certificate, registration or other means to engage in a  
business or profession regulated by this code.

13 5. Section 480 states, in pertinent part:

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

16 (1) Been convicted of a crime. A conviction within the meaning of this  
17 section means a plea or verdict of guilty or a conviction following a plea of nolo  
18 contendere. Any action that a board is permitted to take following the establishment  
19 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.

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

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

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

25 . . . .

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

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6. Section 493 of the Code states:

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

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

7. Section 4301 states in relevant part, that:

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

....

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

.....

(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 evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of 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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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Conviction of Crime)**

3 8. Respondent's applications are subject to denial under section 480, subdivisions  
4 (a)(1) and (a)(3)(A) as well as section 4301, subdivisions (f) and (l) in that on or about December  
5 11, 2001, in a criminal proceeding entitled *People vs. Vannapha Phouiphanith* in Sacramento  
6 County Superior Court, Case Number 01F08399, Respondent was convicted by her plea of nolo  
7 contendere to Penal Code section 32 (accessory to a crime), a misdemeanor. The circumstances  
8 are as follows:

9 a. On or about October 17, 2001, Respondent was arrested for her  
10 involvement in the transportation and sale of 4000 ecstasy pills. On October 16, 2001, an  
11 undercover agent from the Department of Justice, Bureau of Narcotic Enforcement, made contact  
12 with a known drug dealer to set up the purchase and exchange of 4000 ecstasy pills for the  
13 purchase price of \$15,500, to be delivered on October 17, 2001.

14 On October 17, 2001, special agents set up surveillance at 3:30 p.m. outside a  
15 home known to agents for possible drug activity. At 6:40 p.m, agents observed Respondent leave  
16 the home with the dealer and another individual. Respondent and the dealer arrived in two  
17 separate cars at a previously determined McDonald's restaurant location. When the undercover  
18 agent approached the dealer for the purchase, the dealer indicated the drugs were with his  
19 "homey" and pointed to Respondent's car. Undercover agents walked to Respondent's car and  
20 identified the driver as Respondent and the passenger as Nguyen Tran. Tran was holding the pills  
21 in his lap wrapped in a grocery bag.

22 Further investigation revealed that Tran lived at the apartment under surveillance,  
23 and during a search, agents located over a thousand pills on the entertainment center shelf and in  
24 night stands in Tran's bedroom. Tran was Respondent's boyfriend, and Respondent had keys to  
25 his home.

26 b. On or about December 11, 2001, Respondent was sentenced to 3 years  
27 informal probation, 90 days jail and \$100 restitution fine.

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**SECOND CAUSE FOR DENIAL OF APPLICATION**

**(False Statement on Application)**

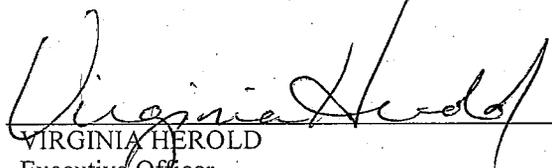
9. Respondent's application for Registration as a Pharmacy Technician is subject to denial under section 480, subdivision (a)(3)(B) and subdivision (c) in that in Respondent's Application for Registration as a Pharmacy Technician, Respondent denied that she had ever been convicted of a crime. Respondent signed the Application under penalty of perjury on May 15, 2008. In fact, Respondent has been convicted of a crime, as more fully set forth in paragraph 7 above.

**PRAYER**

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

1. Denying the application of Vannapha Phouiphanith, also known as Mimi Nguyen for Registration as a Pharmacy Technician and Registration as an Intern Pharmacist; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 8/20/09

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

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