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8	BEFORE THE BOARD OF PHARMACY	
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
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11	In the Matter of the Statement of Issues Against:	Case No. 3999
12	JIMMY B. LAM	
13	295 Monterey Blvd., Apt. 5 San Francisco, CA 94131	STATEMENT OF ISSUES
14	Respondent.	• .
15	Complement allegan	
16	Complainant alleges:	
17	PARTIES 11/G 11 STATES	
18	1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official	
19	capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.	
20	2. On or about March 4, 2009, the Board of Pharmacy, Department of Consumer Affairs	
21	received an application for a Pharmacy Techician License from Jimmy B. Lam (Respondent). Or	
22	or about October 9, 2008, Jimmy B. Lam certified under penalty of perjury to the truthfulness of	
23	all statements, answers, and representations in the application. The Board denied the application	
24	on October 26, 2010.	
25	<u>JURISDICTION</u>	
26	3. This Statement of Issues is brought before the Board of Pharmacy (Board),	
27	Department of Consumer Affairs, under the authority of the following laws. All section	
28	references are to the Business and Professions Code unless otherwise indicated.	
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4. Section 118(a) of the Code states:

"(a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground."

STATUTORY AND REGULATORY PROVISIONS

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 that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

"(B) 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.

. . . . "

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

"....

"(c) The board may refuse a license to any applicant guilty of unprofessional conduct. . . .

"(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

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the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

- 7. Section 4301 of the Code states:
- ".... Unprofessional conduct shall include, but is not limited to, any of the following:
- "(i) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.
- "(k) The conviction of more than one misdemeanor or any felony involving the use. consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.
- "(I) 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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8. 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."

FIRST CAUSE FOR DENIAL OF APPLICATION

(Criminal Convictions)

- 9. Respondent's application is subject to denial under §§ 480, 4300(c), and 4301(l) of the Code, in conjunction with Title 16, § 1770, California Code of Regulations in that Respondent has multiple criminal convictions, as described below:
- a. On or about May 7, 1991, in the The People of the State of California v. Hoa Bung Lam, Ct. # 1293501, Sup. Ct. # 139770, Action Numbers A224655-58, Respondent pled guilty to and was convicted of violating California Health & Safety Code § 11378 (possession of controlled substance for sale), a felony.
- On or about November 29, 2001, in The People of the State of California v. Hoa B. Lam, Ct. # 1987907, Action Numbers C244169-70, Respondent pled guilty to and was convicted of violating California Health & Safety Code § 11377(a) (possession of a controlled substance), at the time a felony.
- On or about January 2, 2002, in the The People of the State of California v. Jimmy Lam, Ct. # 2023563, Sup.Ct. # 184974, Action Numbers C304408-11, Respondent pled not guilty to but was found guilty of violating California Health and Safety Code § 11378 (possession of controlled substance for sale), a felony.
- d. On or about October 3, 2003, in The People of the State of California v. Jimmy Lam, Ct. # 2124384, Sup.Ct. # 190725, Action Numbers F269552-53, Respondent pled guilty to and was convicted of violating California Health & Safety Code § 11378 (possession of controlled substance for sale), a felony.

SECOND CAUSE FOR DENIAL OF APPLICATION 1 (Violations of Statutes Regulating Controlled Substances) 2 Respondent's application is subject to denial under §§ 4300(c) and 4301(j) of the 3 Code in that Respondent violated state law regulating controlled substances and dangerous drugs. 4 The circumstances are described above in the First Cause for Denial of Application. 5 6 **PRAYER** WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, 7 8 and that following the hearing, the Board of Pharmacy issue a decision: Denying the application of Jimmy B. Lam for a Pharmacy Technician License; 9 1. Taking such other and further action as deemed necessary and proper. 2. 10 11 DATED: 12 Executive Officer 13 Board of Pharmacy Department of Consumer Affairs 14 State of California Complainant 15 16 SF2011200930 20447757.doc 17 18 19 20 21 22 23 24 25 26 27 28