KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General
LORRIE M. YOST
Deputy Attorney General
State Bar No. 119088
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 445-2271
Facsimile: (916) 327-8643
Attorneys for Complainant

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

In the Matter of the Statement of Issues Against: **DAVID TAM LA** **9320 Landsdowne Drive** **Stockton, CA 95210** **Pharmacy Technician License Applicant** Respondent.	Case No. 4226 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

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

2. On or about July 19, 2011, the Board of Pharmacy, Department of Consumer Affairs received an application for a Pharmacy Technician License from David Tam La (Respondent). On or about July 12, 2011, David Tam La certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on December 15, 2011.

JURISDICTION

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

4. Section 480 of the Business and Professions Code provides, in pertinent part, that a board may deny a license if the applicant has been convicted of a crime substantially related to the qualifications, functions or duties of the business or profession for which application is made, has committed any act involving dishonesty, fraud or deceit, has committed any act which if done by a licentiate would be grounds for suspension or revocation of a license, or has knowingly made a false statement of fact required to be revealed in the application.

5. Section 4300 of the Code states in pertinent part:

"(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure."

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 procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

"(f) of the Business and Professions Code provides, in pertinent part, that a board may discipline a license if the licentiate has committed 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."

DRUGS

7. Marijuana is a Schedule I controlled substance as designated by Health and Safety Code section 11054(d)(13).

FIRST CAUSE FOR DENIAL OF APPLICATION

(Conviction of Crime)

8. Respondent's application is subject to denial under section 480 subdivision (a)(1), and section 4300, subdivision (c) as it interacts with section 4301, subdivision (l), in that on or about October 21, 2011, in a criminal proceeding entitled People v. Tam Nancy La, William La, Richard Minh La and David Charles La, in Santa Clara County Superior Court, Case Number CC959080, Respondent was convicted by plea of nolo contendere of violating Penal Code section 32 (accessory to a felony), a misdemeanor. The circumstances are as follows:

a. During the months of September and October 2009, law enforcement observed Tam and William La, along with their sons Richard and David, entering and leaving three locations in Stockton and Saratoga, California. A search of these premises on or about October 22, 2009, revealed approximately 1,138 marijuana plants, 2 pounds of processed marijuana, and a large amount of equipment being used in the cultivation of marijuana. They also observed that power was being diverted from the P G & E system to one of the premises. As a result, Respondent, his brother Richard, and his parents, Tam Nancy La and William La, were arrested.

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b. On or about October 21, 2011, in the criminal proceeding described above (People v. Tam Nancy La, William La, Richard Minh La and David Charles La, Santa Clara County Superior Court Case Number CC959080), Respondent's parents were convicted of violating Health and Safety Code section 11358, (planting, cultivation, harvesting and processing of marijuana). Respondent was also that day convicted as an accessory to his parents' crime.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Acts that Would Lead to Discipline of a Licentiate)

9. Respondent's application is subject to denial under section 480 subdivision (a)(3)(A) as that section interacts with section 4301 subdivision (f) in that from approximately September 2009, to October 2009, Respondent was engaged in acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, in that he was acting as an accessory to violations of Health and Safety Code section 11358 by assisting his parents in the planting, cultivation, harvesting and processing of marijuana, as described in Paragraph 6(a), 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 David Tam La for a Pharmacy Technician License;

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

DATED: 8/30/12

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

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