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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 Against:

Case No.: 4431

12 **MIMI NGUYEN**
13 **A.K.A. VANNAPHA PHOUIPHANITH**
406 Washington Square
14 Sacramento, CA 95811

STATEMENT OF ISSUES

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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 May 18, 2012, the Board of Pharmacy (Board), Department of Consumer
21 Affairs received an application for a Pharmacist Examination and Licensure from Mimi Nguyen,
22 also know as Vannapha Phouiphanith (Respondent). On or about May 16, 2012, Respondent
23 certified under penalty of perjury to the truthfulness of all statements, answers, and
24 representations in the application. The Board denied the application on August 1, 2012.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All sections references are to the
28 Business and Professions Code unless otherwise indicated.

1 **PREVIOUS LICENSE HISTORY**

2 4. On or about May 19, 2008, the Board received an application for Registration as a
3 Pharmacy Technician from Respondent. On or about September 10, 2008, the Board received a
4 second application from Respondent for Registration as an Intern Pharmacist. On or about May
5 15, 2008, and August 25, 2008, respectively, Respondent certified under penalty of perjury to the
6 truthfulness of all statements, answers, and representations in the application. The Board denied
7 both applications on January 14, 2009.

8 5. On or about September 10, 2008, the Board received an application from Respondent
9 for Registration as an Intern Pharmacist. The Board denied the application on January 14, 2009.
10 However, pursuant to a stipulated settlement in Case No. 3369 (herein incorporated by reference),
11 Respondent was issued an Intern Pharmacist Registration on April 19, 2010. The registration was
12 immediately revoked. The revocation was stayed and Respondent's registration was placed on
13 probation for five years or for the duration of her status as a Registered Intern Pharmacist,
14 whichever terminated first.

15 **STATUTORY PROVISIONS**

16 6. Section 477 of the Code states:

17 As used in this division:

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

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

21 7. Section 480 states, in pertinent part:

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

24 (1) Been convicted of a crime. A conviction within the meaning of this
25 section means a plea or verdict of guilty or a conviction following a plea of nolo
26 contendere. Any action that a board is permitted to take following the establishment
27 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.

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

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

2
3 (B) The board may deny a license pursuant of this subdivision only if the
crime or act is substantially related to the qualifications, functions, or duties of the
4 business or profession fro which application is made.

5 8. Section 493 of the Code states:

6 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
7 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
8 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
9 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
10 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
11 question.

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

13 9. Section 4301 states in relevant part, that:

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

16

17
18 (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
19 a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

20

21 (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
22 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
23 state regulating controlled substances or dangerous drugs shall be conclusive
evidence of unprofessional conduct. In all other cases, the record of conviction shall
24 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
25 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
26 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
27 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
28 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

1 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
2 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
3 dismissing the accusation, information, or indictment.

4 **COST RECOVERY**

5 10. Code section 125.3 provides, in pertinent part, that the Board may request the
6 administrative law judge to direct a licentiate found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case.

9 **FIRST CAUSE FOR DENIAL**

10 **(Conviction of Crime)**

11 11. Respondent's application is subject to denial under section 480, subdivisions (a)(1),
12 and 480 subdivisions (a)(3)(A) for violating of section 4301, subdivisions (l) in that on or about
13 December 11, 2001, in a criminal proceeding entitled *People vs. Vannapha Phouiphanith* in
14 Sacramento County Superior Court, Case Number 01F08399, Respondent was convicted on her
15 plea of nolo contendere to Penal Code section 32 (accessory to a crime), a misdemeanor. The
16 circumstances are as follows:

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

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

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

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

7 **SECOND CAUSE FOR DENIAL**

8 **(Act Involving Moral Turpitude)**

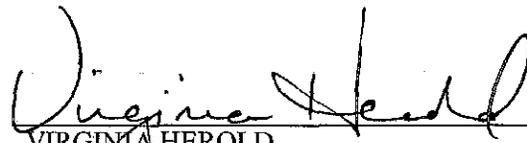
9 12. Respondent's application is subject to denial under Code section 4301, subdivisions
10 (f) in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or
11 corruption, as set forth in subparagraph 11(a).

12 **PRAYER**

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

- 15 1. Denying the application of Mimi Nguyen also know as Vannapha Phouiphanith for a
16 Pharmacist Examination and Licensure and,
17 2. Taking such other and further action as deemed necessary and proper.

18
19 DATED: 3/1/13



20 VIRGINIA HEROLD
21 Executive Officer
22 Board of Pharmacy
23 Department of Consumer Affairs
24 State of California
25 *Complainant*

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