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

In the Matter of the Statement of Issues Against: LOAN NGOC CHAU, Applicant for Pharmacy Technician Registration, Respondent.	Case No. 2826 OAH No. N 2005030323

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on March 30, 2005.

Joshua A. Room, Deputy Attorney General, represented complainant.

Respondent was present and represented herself.

Submission of the matter was deferred to April 13, 2005 for receipt of further evidence, which was received and considered. The matter was submitted on April 13, 2005.

FACTUAL FINDINGS

1. Patricia F. Harris (complainant) made this statement of issues in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board), State of California and not otherwise.

2. On January 12, 2004, the Board received an application for registration as a Pharmacy Technician from Loan Ngoc Chau (respondent). On January 12, 2004, Loan Ngoc Chau certified under penalty of perjury to the truthfulness of all statements, answers and representations in the application. The Board denied the application on September 1, 2004.

3. On July 9, 2002, in a criminal proceeding entitled *People v. Loan N. Chau* in Alameda County Superior Court, Case Number H31793, respondent was convicted by plea of nolo contendere (no contest) of violating Penal Code sections 487, subdivision (a) and 503

(Grand theft of an amount in excess of $400; Embezzlement), felonies and crimes involving moral turpitude that are substantially related to the duties, qualifications and functions of a licensee.

4. In August 2001, an embezzlement investigation conducted by respondent's employer, Marriott International, Inc., discovered that respondent had falsified employment documents so as to embezzle additional payroll funds for herself totaling almost $38, 000. The matter was refereed to the Fremont Police Department for further investigation.

During the Marriott investigation, respondent admitted the theft in a written statement dated August 17, 2001. On September 4, 2001, during an interview with Fremont Police, respondent again admitted to her falsification of payroll records and her embezzlement of almost $38,000 in overtime wages from her employer. On September 14, 2001, a felony complaint and arrest warrant for respondent was issued and respondent was charged with grand theft/embezzlement.

On July 9, 2002, respondent pleaded no contest to felony grand theft/embezzlement. She was sentenced to five (5) years probation, $38,058.16 restitution to her employer, a $200 fine and one day in jail with credit for time served. Respondent will be on probation until July 9, 2007, unless she receives an early termination.

5. Respondent's conviction involves acts of dishonesty with the intent to substantially benefit her. She knowingly made and signed employment documents that falsely represented the existence or non-existence of a state of facts.

6. Respondent is presently employed by Pulmonary Solutions as a medical biller. She is employed there full time and is in good standing.

7. Respondent has made full restitution to her former employer, Marriott International, Inc. She completed her obligation to them July 5, 2002 (prior to the conviction).

8. Respondent completed her certification as a Pharmacy Technician on March 31, 2004. She received honors from Silicon Valley College for a 4.0 grade point average. She has over $18,000 owed in loans to pay for her education.

9. Respondent admits to having a gambling problem. She embezzled the money from her employer to pay gambling debts. She claims that she no longer gambles, but she has not attended any counseling for her gambling problem.

10. Respondent clearly knows that what she did was wrong. She wants to better herself. That is why she went to school to become a pharmacy technician. Respondent is married and has a five-year-old son. If she can come to terms with whatever was creating

her gambling problems through education and counseling, it would be in the public interest to grant respondent a probationary license.[1]

LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 3, 4, and 5, cause for denial exists pursuant to Business and Professions Code sections 480, subdivision (a)(1) and 4301, subdivision (l) (Conviction of Substantially Related Crime), 480, subdivision (a)(2) and 4301, subdivision (f) (Dishonesty) and 4301, subdivision (g) (Falsification of Documents).

2. The matters set forth in Findings 6, 7, 8, 9 and 10 have been considered in making the following order.

ORDER

The application of Loan N. Chau for a registration as a pharmacy technician is hereby granted, and immediately revoked. However, the revocation is stayed and the license is placed on probation for a period of five (5) years upon the following terms and conditions:

1. Obey All Laws
   Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

2. Reporting to the Board
   Respondent shall report to the board quarterly. The report shall be made either in person or in writing, as directed. Respondent shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the board.

3. Interview with the Board
   Upon receipt of reasonable notice, respondent shall appear in person for interviews with the board upon request at various intervals at a location to be determined by the board. Failure to appear for a scheduled interview without prior notification to board staff shall be considered a violation of probation.

4. Cooperation with Board Staff
   Respondent shall cooperate with the board's inspectional program and in the board's monitoring and investigation of respondent's compliance

[1] See Order 13 and 14 requiring respondent to attend gambling recovery relapse program and abstain from gambling.

with the terms and conditions of his or her probation. Failure to comply shall be considered a violation of probation.

5. Notice to Employers

Respondent shall notify all present and prospective employers of the decision in case number N2005030323 and the terms, conditions and restrictions imposed on respondent by the decision.

Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking new employment, respondent shall cause his or her employer to report to the board in writing acknowledging the employer has read the decision in case number N2005030323.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify the pharmacist-in-charge and/or owner at every pharmacy of the terms and conditions of the decision in case number N2005030323 in advance of the respondent commencing work at each pharmacy.

> "Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician, whether the respondent is considered an employee or independent contractor.

6. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation.

7. Status of License

Respondent shall, at all times while on probation, maintain an active current technician registration/certification with the board, including any period during which suspension or probation is tolled.

If respondent's technician registration/certification expires or is cancelled by operation of law or otherwise, upon renewal or reapplication, respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

8. Notification of Employment/Mailing Address Change

Respondent shall notify the board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving and/or the address of the new employer, supervisor or owner

and work schedule, if known. Respondent shall notify the board in writing within 10 days of a change in name, mailing address or phone number.

9. Tolling of Probation
It is a violation of probation for respondent to work less than a specific number of hours to be determined by the Board or its designee per month as a pharmacy technician. Should respondent, regardless of residency, for any reason cease practicing as a pharmacy technician in California, respondent must notify the board in writing within 10 days of cessation of practice or the resumption of the practice. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three consecutive years.

> "Cessation of practice" means any period of time exceeding 30 days in which respondent is not engaged in the practice of a pharmacy technician as defined in the Business and Professions Code.

10. Violation of Probation
If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order, which was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction, and the period of probation shall be extended, until the petition to revoke probation or accusation is heard and decided.

If a respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty which was stayed.

11. Completion of Probation
Upon successful completion of probation, respondent's technician registration will be fully restored.

12. License Surrender While on Probation/Suspension
Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy

the terms and conditions of probation, respondent may tender his or her license to the board for surrender. The board shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, respondent shall relinquish his or her pocket license to the board within 10 days of notification by the board that the surrender is accepted. Respondent may not reapply for any license from the board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

13. Attend Gambling Recovery Relapse Prevention and Support Groups
Within 30 days of the effective date of this decision, respondent shall begin regular attendance at a board-approved recognized and established gambling abuse recovery support group in California, (e.g., Gamblers Anonymous). Respondent must attend at least one group meeting per week. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation.

14. Abstain From Gambling
Respondent shall abstain from gambling.

DATED: May 12, 2005

Ruth S Astle

RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against: LOAN NGOC CHAU, Applicant for Pharmacy Technician Registration. Respondent.	Case No. 2826 OAH No. N2005030323

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on August 5, 2005.

It is so ORDERED on July 6, 2005.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

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Board President

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

In the Matter of the Statement of Issues Against: LOAN NGOC CHAU Applicant for Pharmacy Technician Registration Respondent.	Case No. 2826 OAH No. **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

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

2. On or about January 13, 2004, the Board of Pharmacy, Department of Consumer Affairs received an application for registration as a Pharmacy Technician from Loan Ngoc Chau (Respondent). On or about January 12, 2004, Loan Ngoc Chau certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on September 1, 2004.

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.

STATUTORY PROVISIONS

4. Section 4300, subdivision (c), of the Code provides in pertinent part that the Board may refuse a license to any applicant guilty of unprofessional conduct.

5. Section 4301 of the Code provides, in pertinent part, that "unprofessional conduct" is defined to include, but not be 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.

"(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

. . .

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. . . ."

. . .

6. Section 475 of the Code states, in pertinent part:

"(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."

. . .

7. 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. . . .

"(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."

. . .

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

(Conviction of Substantially Related Crime)

9. Respondent's application is subject to denial per Code sections 480(a)(1) and 4301(l), and California Code of Regulations, title 16, section 1770, in that on or about July 9, 2002, in a criminal proceeding entitled *People v. Loan N. Chau* in Alameda County Superior Court, Case Number H31793, Respondent was convicted by plea of nolo contendere under Penal Code sections 487(a) and 503 [Grand theft of an amount in excess of $400; Embezzlement], a felony and a crime substantially related to pharmacy practice The circumstances are as follows:

a. In or about August 2001, an embezzlement investigation conducted by Respondent's employer, Marriott International Inc., discovered that Respondent had falsified employment documents so as to embezzle additional funds to herself totaling nearly $38,000.00. The matter was referred to the Fremont Police Department for investigation.

b. During the Marriott investigation, Respondent admitted the theft in a written statement dated August 17, 2001. On or about September 4, 2001, during an interview with Fremont Police, Respondent again admitted to her falsification of employment records and her embezzlement of the nearly $38,000.00 in extra payments from her employer. On or about September 14, 2001, a felony complaint and warrant for Respondent's arrest pursuant to Penal Code sections 487(a) and 503 was issued, and Respondent was charged under those statutes.

c. On or about July 9, 2002, in the matter of *People v. Loan N. Chau*, Case No. H31793 in Alameda County Superior Court, Respondent pleaded no contest or nolo contendere to felony grand theft/embezzlement under Penal Code sections 487(a) and 503.

d. On or about July 9, 2002, Respondent was sentenced as follows: five (5) years formal probation, $38,058.16 restitution to Marriott International Inc., a $200.00 fine, and one day in county jail. Respondent is therefore on probation until at least July 9, 2007.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Dishonesty, Fraud, or Corruption)

10. Respondent's application is subject to denial per Code sections 480(a)(2) and 4301(f) in that, as described in paragraph 9, above, Respondent admitted to acts of theft and embezzlement from her employer, acts involving dishonesty, fraud or deceit with the intent to substantially benefit herself or another, or substantially injure another.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Falsification of Documents)

11. Respondent's application is subject to denial per Code section 4301(g) in that, as described in paragraph 9, above, Respondent admitted to knowingly making or signing employment documents that falsely represented the existence or nonexistence of a state of facts.

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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:

1. Denying the application of Loan Ngoc Chau for registration by the Board of Pharmacy as a Pharmacy Technician;

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

DATED: 1/31/05

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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