



California State Board of Pharmacy
 1625 N. Market Blvd, N219, Sacramento, CA 95834
 Phone: (916) 574-7900
 Fax: (916) 574-8618
 www.pharmacy.ca.gov

STATE AND CONSUMER SERVICES AGENCY
 DEPARTMENT OF CONSUMER AFFAIRS
 GOVERNOR EDMUND G. BROWN JR.

APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACY TECHNICIAN LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>Gina Michelle Nguyen</u>	Case No. <u>SI 4380</u>
Address of Record: _____ _____	

Received
 JUN 17 2013

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. SI 4380, I hereby request to surrender my pharmacy technician license; License No. 121998. The Board or its designee 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, I will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of my license history with the Board.

Upon the acceptance of the surrender, I shall relinquish my pharmacy technician license to the Board within ten (10) days of notification by the Board that the surrender is accepted. I understand that I may not reapply for any license, permit, or registration from the board for three (3) years from the effective date of the surrender. I further understand that I shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

[Signature]
 Applicant's Signature

06/13/13
 Date

[Signature]
 Executive Officer's Approval

6/19/13
 Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 574-7900, 1625 N. Market Blvd., Suite N-219, Sacramento, CA 95834. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

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

In the Matter of the Statement of Issues Against:

Case No. 4380

GINA MICHELLE NGUYEN

Pharmacy Technician Registration Applicant

Respondent.

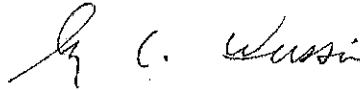
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on April 18, 2013.

It is so ORDERED on March 19, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
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Attorneys for Complainant

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

10 In the Matter of the Statement of Issues Against:
11 **GINA MICHELLE NGUYEN**
12 Respondent.

Case No. 4380

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

13
14 In the interest of a prompt and speedy settlement of this matter, consistent with the public
15 interest and the responsibility of the Board of Pharmacy, Department of Consumer Affairs, the
16 parties agree to the following Stipulated Settlement and Disciplinary Order to be submitted to the
17 Board for approval and adoption as the final disposition of the Statement of Issues.

18
19 PARTIES

20 1. Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy, brought
21 this action solely in her official capacity and is represented in this matter by Kamala D. Harris,
22 Attorney General of the State of California, by Joshua A. Room, Deputy Attorney General.

23 2. Gina Michelle Nguyen (Respondent) is representing herself in this proceeding and
24 has chosen not to exercise her right to be represented by counsel.

25 3. On or about February 7, 2012, the Board of Pharmacy received a Pharmacy
26 Technician Application from Gina Michelle Nguyen (Respondent). On or about January 26,
27 2012, Respondent certified under penalty of perjury the truthfulness of all statements, answers,
28 and representations in the application. The Board denied the application on or about July 3, 2012.

1 JURISDICTION

2 4. Statement of Issues No. 4380 was filed before the Board of Pharmacy (Board),
3 Department of Consumer Affairs, and is currently pending against Respondent. The Statement of
4 Issues and all other statutorily required documents were properly served on Respondent on
5 November 14, 2012. A copy of Statement of Issues No. 4380 is attached as exhibit A and
6 incorporated herein by reference.

7
8 ADVISEMENT AND WAIVERS

9 5. Respondent has carefully read, and understands, the charges and allegations in
10 Statement of Issues No. 4380. Respondent has also carefully read, and understands the effects of,
11 this Stipulated Settlement and Disciplinary Order.

12 6. Respondent is fully aware of her legal rights in this matter, including the right to a
13 hearing on the charges and allegations in the Statement of Issues; the right to be represented by
14 counsel at her own expense; the right to confront and cross-examine the witnesses against her; the
15 right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas
16 to compel the attendance of witnesses and the production of documents; the right to
17 reconsideration and court review of an adverse decision; and all other rights accorded by the
18 California Administrative Procedure Act and other applicable laws.

19 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
20 every right set forth above.

21
22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in Statement of
24 Issues No. 4380, except that as to page 4, paragraph 13, lines 14-16 and 18-19, Respondent does
25 not admit that the scale discovered by police was hers or that she had burn marks on her fingers.

26 9. Respondent agrees that her Pharmacy Technician Application is subject to denial and
27 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

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RESERVATION

10. Admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this stipulation, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that, upon satisfaction of statutory and regulatory requirements
3 for issuance thereof, a Pharmacy Technician License shall be issued to Gina Michelle Nguyen
4 (Respondent) and immediately revoked. Revocation is stayed and the Pharmacy Technician
5 License is placed on probation for five (5) years on the terms and conditions detailed below

6 **1. Certification Prior to Resuming Work**

7 Respondent shall be automatically suspended from working as a pharmacy technician until
8 she is certified as defined by Business and Professions Code section 4202(a)(4) and provides
9 satisfactory proof of certification to the board. Respondent shall not resume working as a
10 pharmacy technician until notified by the board. Failure to achieve certification within one (1)
11 year shall be considered a violation of probation. Respondent shall not resume working as a
12 pharmacy technician until notified by the board.

13 During suspension, respondent shall not enter any pharmacy area or any portion of any
14 other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other
15 distributor of drugs), any drug manufacturer, or any other location where dangerous drugs and
16 devices or controlled substances are maintained. Respondent shall not do any act involving drug
17 selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent
18 manage, administer, or assist any licensee of the board. Respondent shall not have access to or
19 control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled
20 substances. Respondent shall not resume work until notified by the board.

21 Failure to comply with this suspension shall be considered a violation of probation.

22 **2. Obey All Laws**

23 Respondent shall obey all state and federal laws and regulations.

24 Respondent shall report any of the following occurrences to the board, in writing, within
25 seventy-two (72) hours of such occurrence:

- 26 an arrest or issuance of a criminal complaint for violation of any provision of the
27 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
28 substances laws

- 1 a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
- 2 criminal complaint, information or indictment
- 3 a conviction of any crime
- 4 discipline, citation, or other administrative action filed by any state or federal agency
- 5 which involves respondent's pharmacy technician license or which is related to the
- 6 practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing,
- 7 or charging for any drug, device or controlled substance.

8 Failure to timely report any such occurrence shall be considered a violation of probation.

9 **3. Report to the Board**

10 Respondent shall report to the board quarterly, on a schedule as directed by the board or its
11 designee. The report shall be made either in person or in writing, as directed. Among other
12 requirements, respondent shall state in each report under penalty of perjury whether there has
13 been compliance with all the terms and conditions of probation. Failure to submit timely reports
14 in a form as directed shall be considered a violation of probation. Any period(s) of delinquency
15 in submission of reports as directed may be added to the total period of probation. Moreover, if
16 the final probation report is not made as directed, probation shall be automatically extended until
17 such time as the final report is made and accepted by the board.

18 **4. Interview with the Board**

19 Upon receipt of reasonable prior notice, respondent shall appear in person for interviews
20 with the board or its designee, at such intervals and locations as are determined by the board or its
21 designee. Failure to appear for any scheduled interview without prior notification to board staff,
22 or failure to appear at two (2) or more scheduled interviews with the board or its designee during
23 the period of probation, shall be considered a violation of probation.

24 **5. Cooperate with Board Staff**

25 Respondent shall cooperate with the board's inspection program and with the board's
26 monitoring and investigation of respondent's compliance with the terms and conditions of her
27 probation. Failure to cooperate shall be considered a violation of probation.

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1 **6. Notice to Employers**

2 During the period of probation, respondent shall notify all present and prospective
3 employers of the decision in case number 4380 and the terms, conditions and restrictions imposed
4 on respondent by the decision, as follows:

5 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
6 respondent undertaking any new employment, respondent shall cause her direct supervisor,
7 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
8 tenure of employment) and owner to report to the board in writing acknowledging that the listed
9 individual(s) has/have read the decision in case number 4380 and the terms and conditions
10 imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or
11 supervisor(s) submit timely acknowledgement(s) to the board.

12 If respondent works for or is employed by or through a pharmacy employment service,
13 respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy
14 of the terms and conditions of the decision in case number 4380 in advance of commencing work
15 at each pharmacy. A record of this notification must be provided to the board upon request.

16 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
17 (15) days of respondent undertaking any new employment by or through a pharmacy employment
18 service, respondent shall cause her direct supervisor with the pharmacy employment service to
19 report to the board in writing acknowledging that he or she has read the decision in case number
20 4380 and the terms and conditions imposed thereby. It shall be respondent's responsibility to
21 ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

22 Failure to timely notify present or prospective employer(s) or to cause employer(s) to
23 submit timely acknowledgements to the board shall be considered a violation of probation.

24 "Employment" within the meaning of this provision shall include any full-time,
25 part-time, temporary or relief service or pharmacy management service as a pharmacy
26 technician or in any position for which a pharmacy technician license is a requirement
27 or criterion for employment, whether the respondent is considered an employee,
28 independent contractor or volunteer.

1 **7. Probation Monitoring Costs**

2 Respondent shall pay any costs associated with probation monitoring as determined by the
3 board each and every year of probation. Such costs shall be payable to the board on a schedule as
4 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
5 be considered a violation of probation.

6 **8. Status of License**

7 Respondent shall, at all times while on probation, maintain an active, current pharmacy
8 technician license with the board, including any period during which suspension or probation is
9 tolled. Failure to maintain an active, current license shall be considered a violation of probation.

10 If respondent's pharmacy technician license expires or is cancelled by operation of law or
11 otherwise at any time during the period of probation, including any extensions thereof due to
12 tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all
13 terms and conditions of this probation not previously satisfied.

14 **9. No Ownership of Licensed Premises**

15 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
16 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
17 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
18 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
19 days following the effective date of this decision and shall immediately thereafter provide written
20 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
21 documentation thereof shall be considered a violation of probation.

22 **10. Notification of a Change in Employment, Name, Address, or Phone**

23 Respondent shall notify the board in writing within ten (10) days of any change of
24 employment. Said notification shall include the reasons for leaving, the address of the new
25 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
26 shall further notify the board in writing within ten (10) days of a change in name, residence
27 address, mailing address, or phone number. Failure to timely notify the board of any change in
28 employer, name, address, or phone number shall be considered a violation of probation.

1 **11. Tolling of Probation**

2 Except during periods of suspension, respondent shall, at all times while on probation, be
3 employed as a pharmacy technician in California for a minimum of forty (40) hours per calendar
4 month. Any month during which this minimum is not met shall toll the period of probation, i.e.,
5 the period of probation shall be extended by one month for each month during which this
6 minimum is not met. During any such period of tolling of probation, respondent must
7 nonetheless comply with all terms and conditions of probation.

8 Should respondent, regardless of residency, for any reason (including vacation) cease
9 working as a pharmacy technician for a minimum of forty (40) hours per calendar month in
10 California, respondent must notify the board in writing within ten (10) days of cessation of work
11 and must further notify the board in writing within ten (10) days of the resumption of the work.
12 Any failure to provide such notification(s) shall be considered a violation of probation.

13 It is a violation of probation for respondent's probation to remain tolled pursuant to the
14 provisions of this condition for a total period, counting consecutive and non-consecutive months,
15 exceeding thirty-six (36) months.

16 "Cessation of work" means a calendar month during which respondent is not
17 working for at least forty (40) hours as a pharmacy technician, as defined in Business
18 and Professions Code section 4115. "Resumption of work" means any calendar
19 month during which respondent is working for at least forty (40) hours as a pharmacy
20 technician as defined by Business and Professions Code section 4115.

21 **12. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

22 Within thirty (30) days of the effective date of this decision, respondent shall begin regular
23 attendance at a recognized and established substance abuse recovery support group in California,
24 (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) that has been approved by the board or
25 its designee, attending at least one group meeting per week unless otherwise directed by the board
26 or its designee. Respondent shall continue regular attendance and submit signed and dated
27 documentation confirming attendance with each quarterly report for the duration of probation.
28 Failure to attend or submit documentation thereof shall be considered a violation of probation.

1 **13. Abstain from Drugs and Alcohol Use**

2 Respondent shall completely abstain from the possession or use of alcohol, controlled
3 substances, dangerous drugs and their associated paraphernalia except when the drugs are
4 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon
5 request of the board or its designee, respondent shall provide documentation from the licensed
6 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the
7 treatment of the respondent. Failure to timely provide such documentation shall be considered a
8 violation of probation. Respondent shall ensure that she is not in the same physical location as
9 individuals who are using illicit substances even if respondent is not personally ingesting the
10 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia
11 not supported by the documentation timely provided, and/or any physical proximity to persons
12 using illicit substances, shall be considered a violation of probation.

13 **14. Random Drug Screening**

14 Respondent, at her own expense, shall participate in random testing, including but not
15 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
16 screening program as directed by the board or its designee. Respondent may be required to
17 participate in testing for the entire probation period and the frequency of testing will be
18 determined by the board or its designee. At all times respondent shall fully cooperate with the
19 board or its designee, and shall, when directed, submit to such tests and samples for the detection
20 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its
21 designee may direct. Failure to timely submit to testing as directed shall be considered a violation
22 of probation. Upon request of the board or its designee, respondent shall provide documentation
23 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is
24 a necessary part of the treatment of the respondent. Failure to timely provide such documentation
25 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any
26 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment
27 shall be considered a violation of probation and shall result in respondent's automatic suspension.
28 Respondent may not resume work as a pharmacy technician until notified by the board in writing.

1 During any such suspension, respondent shall not enter any pharmacy area or any portion of
2 or any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any
3 other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs
4 and devices or controlled substances are maintained. Respondent shall not do any act involving
5 drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall
6 respondent manage, administer, or assist any licensee of the board. Respondent shall not direct,
7 control or perform any aspect of the practice of pharmacy. Respondent shall not have access to or
8 control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled
9 substances. Respondent shall not resume work until notified by the board.

10 Failure to comply with any such suspension shall be considered a violation of probation.

11 **15. Work Site Monitor**

12 Within ten (10) days of the effective date of this decision, respondent shall identify a work
13 site monitor, for prior approval by the board, who shall be responsible for supervising respondent
14 during working hours. Respondent shall be responsible for ensuring that the work site monitor
15 reports in writing to the board quarterly. Should the designated work site monitor determine at
16 any time during the probationary period that respondent has not maintained sobriety, she shall
17 notify the board immediately, either orally or in writing as directed. Should respondent change
18 employment, a new work site monitor must be designated, for prior approval by the board, within
19 ten (10) days of commencing new employment. Failure to identify an acceptable initial or
20 replacement work site monitor, or to ensure quarterly reports are submitted to the board, shall be
21 considered a violation of probation.

22 **16. Prescription Coordination and Monitoring of Prescription Use**

23 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
24 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
25 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's
26 history with the use of methamphetamine and who will coordinate and monitor any prescriptions
27 for respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved
28 practitioner shall be provided with a copy of the board's Statement of Issues and decision.

1 A record of this notification must be provided to the board upon request. Respondent shall
2 sign a release authorizing the practitioner to communicate with the board about respondent's
3 treatment(s). The coordinating physician, nurse practitioner, physician assistant, or psychiatrist
4 shall report to the board on a quarterly basis for the duration of probation regarding respondent's
5 compliance with this condition. If any substances considered addictive have been prescribed, the
6 report shall identify a program for the time limited use of any such substances.

7 The board may require that the single coordinating physician, nurse practitioner, physician
8 assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive
9 medicine. Should respondent, for any reason, cease supervision by the approved practitioner,
10 respondent shall notify the board immediately and, within thirty (30) days of ceasing, submit the
11 name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist of
12 respondent's choice to the board or its designee for its prior approval. Failure to timely submit
13 the selected practitioner or replacement practitioner to the board for approval, or to ensure the
14 required reporting thereby on the quarterly reports, shall be considered a violation of probation.

15 If at any time an approved practitioner determines that respondent is unable to practice
16 safely or independently as a pharmacy technician, the practitioner shall notify the board
17 immediately by telephone and follow up by written letter within three (3) working days. Upon
18 notification by the board or its designee of this determination, respondent shall be automatically
19 suspended and shall not resume practice until notified by the board that practice may be resumed.

20 During any such suspension, respondent shall not enter any pharmacy area or any portion of
21 or any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any
22 other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs
23 and devices or controlled substances are maintained. Respondent shall not do any act involving
24 drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall
25 respondent manage, administer, or assist any licensee of the board. Respondent shall not direct,
26 control or perform any aspect of the practice of pharmacy. Respondent shall not have access to or
27 control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled
28 substances. Respondent shall not resume work until notified by the board.

1 Failure to comply with any such suspension shall be considered a violation of probation.

2 **17. License Surrender While on Probation/Suspension**

3 Following the effective date of this decision, should respondent cease work due to
4 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
5 respondent may tender her pharmacy technician license to the board for surrender. The board or
6 its designee shall have the discretion whether to grant the request for surrender or take any other
7 action it deems appropriate. Upon formal acceptance of the surrender of the license, respondent
8 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
9 record of discipline and shall become a part of the respondent's license history with the board.

10 Upon acceptance of the surrender, respondent shall relinquish her pharmacy technician
11 license to the board within ten (10) days of notification by the board the surrender is accepted.
12 Respondent may not reapply for any license, permit, or registration from the board for three (3)
13 years from the effective date of the surrender. Respondent shall meet all requirements applicable
14 to the license sought as of the date the application for that license is submitted to the board.

15 **18. Violation of Probation**

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

21 If respondent violates probation in any respect, the board, after giving respondent notice
22 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
23 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
24 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
25 a petition to revoke probation or an accusation is filed against respondent during probation, the
26 board shall have continuing jurisdiction, and the period of probation shall be automatically
27 extended until the petition to revoke probation or accusation is heard and decided.

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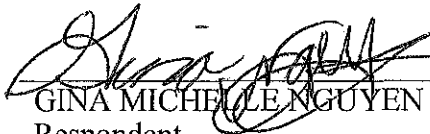
19. Completion of Probation

Upon written notice by the board indicating successful completion of probation,
respondent's pharmacy technician license will be fully restored.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Pharmacy Technician Application, and resulting License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 01/29/13



GINA MICHELLE NGUYEN
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: 2/11/2013

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General


JOSHUA A. ROOM
Deputy Attorney General
Attorneys for Complainant

SF2012402508
40641232.doc

Exhibit A

Statement of Issues No. 4380

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Deputy Attorney General
4 State Bar No. 214663
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5 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

10 In the Matter of the Statement of Issues Against: Case No. 4380
11 **GINA MICHELLE NGUYEN**
12 Respondent. **STATEMENT OF ISSUES**
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14

15
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 February 7, 2012, the Board of Pharmacy, Department of Consumer
21 Affairs received a Pharmacy Technician Application from Gina Michelle Nguyen (Respondent).
22 On or about January 26, 2012, Respondent certified under penalty of perjury the truthfulness of
23 all statements, answers, and representations in the application. The Board denied the application
24 on or about July 3, 2012.

25 JURISDICTION

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 (Code) unless otherwise indicated.

1 STATUTORY AND REGULATORY PROVISIONS

2 4. Section 4300, subdivision (c), of the Code states:

3 “(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The
4 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
5 guilty of unprofessional conduct and who has met all other requirements for licensure. The board
6 may issue the license subject to any terms or conditions not contrary to public policy”

7 5. Section 480 of the Code states, in pertinent part:

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

10 “(1) Been convicted of a crime. . . . Any action which a board is permitted to take following
11 the establishment of a conviction may be taken . . . irrespective of a subsequent order under the
12 provisions of Section 1203.4 of the Penal Code.

13
14 “(3) Done any act which if done by a licentiate of the business or profession in question,
15 would be grounds for suspension or revocation of license.

16 “The board may deny a license pursuant to this subdivision only if the crime or act is
17 substantially related to the qualifications, functions or duties of the . . . [license].”

18 6. Section 4301 of the Code provides, in pertinent part, that “unprofessional conduct” is
19 defined to include, but not be limited to, any of the following:

20 (j) The violation of any of the statutes of this state, of any other state, or of the United
21 States regulating controlled substances and dangerous drugs.

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

24 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
25 violation of or conspiring to violate any provision or term of this chapter or of the applicable
26 federal and state laws and regulations governing pharmacy, including regulations established by
27 the board or by any other state or federal regulatory agency.

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1 7. California Code of Regulations, title 16, section 1770, states:

2 "For the purpose of denial, suspension, or revocation of a personal or facility license
3 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
4 crime or act shall be considered substantially related to the qualifications, functions or duties of a
5 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
6 licensee or registrant to perform the functions authorized by his license or registration in a manner
7 consistent with the public health, safety, or welfare."

8 8. Health and Safety Code section 11364, in pertinent part, makes it unlawful to possess
9 an opium pipe or other paraphernalia used to inject or smoke controlled substances.

10 9. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess
11 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
12 subdivision (d), or any non-narcotic drug in Schedules III-V, absent a valid prescription.

13 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

14 10. Section 4021 of the Code states:

15 "Controlled substance' means any substance listed in Chapter 2 (commencing with Section
16 11053) of Division 10 of the Health and Safety Code."

17 11. Section 4022 of the Code states, in pertinent part:

18 "Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use,
19 except veterinary drugs that are labeled as such, and includes the following:

20 "(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without
21 prescription,' 'Rx only,' or words of similar import.

22 ...
23 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
24 prescription or furnished pursuant to Section 4006."

25 12. **Methamphetamine** is a Schedule II controlled substance as designated by Health and
26 Safety Code section 11055(d)(2) and a dangerous drug as designated by Business and Professions
27 Code section 4022. It is a stimulant drug.

28 ///

1 FIRST CAUSE FOR DENIAL OF APPLICATION

2 (Conviction of Substantially Related Crime(s))

3 13. Respondent's application is subject to denial under the following section(s) of the
4 Code: 480(a)(1); 480(a)(3) by reference to 4301(l); and/or 4300(c) by reference to 4301(l) and
5 California Code of Regulations, title 16, section 1770, for conviction of a substantially related
6 crime, in that on or about April 2, 2009, in a case titled *People v. Gina Michelle Nguyen*, Case
7 No. NM375024A in San Mateo County Superior Court, Respondent was convicted of violating
8 Health and Safety Code section 11377, subdivision (a) (Possession of controlled substance -
9 **methamphetamine**), a misdemeanor, as follows:

10 a. On or about April 15, 2008, while they were sitting in a parked car, Respondent
11 and a companion were contacted by officer(s) of the Daly City Police Department. A search of
12 the jacket worn by Respondent discovered a glass pipe with a white milky residue and a brown
13 residue that the officer(s) suspected had been used to smoke **methamphetamine**, and a cigarette
14 box containing a clear plastic baggie with a crystal powder believed to be **methamphetamine**. A
15 subsequent search of bag(s) belonging to Respondent discovered a twin beam scale with what
16 appeared to be trace amounts of **methamphetamine** on it. Respondent subsequently admitted
17 that the powder was **methamphetamine**, belonging to her. A field test of the powder confirmed
18 it to be **methamphetamine**. Officers noted that Respondent's thumb and finger had burn marks
19 characteristic of **methamphetamine** smokers. Respondent was taken into custody on suspicion
20 of violating Health and Safety Code section 11364 (Possession of drug paraphernalia) and Health
21 and Safety Code section 11377 (Possession of controlled substance - **methamphetamine**).

22 b. On or about April 17, 2008, Respondent was charged in Case No. NM375024A
23 with violating Health and Safety Code section 11377, subdivision (a) (Possession of controlled
24 substance - **methamphetamine**), a misdemeanor.

25 c. On or about April 2, 2009, Respondent was convicted of violating Health and
26 Safety Code section 11377, subdivision (a) (Possession of controlled substance -
27 **methamphetamine**), a misdemeanor. Imposition of sentence was suspended in favor of a period
28 of probation of eighteen (18) months, on terms and conditions including drug treatment.

1 SECOND CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substance)

3 14. Respondent's application is subject to denial under the following section(s) of the
4 Code: 480(a)(3) by reference to section 4301(j) and/or (o) and/or section 4060 of the Code,
5 and/or Health and Safety Code section 11377; and/or 4300(c) by reference to section 4301(j)
6 and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section 11377, in that
7 Respondent, as described in paragraph 13, possessed, conspired to possess, and/or assisted in or
8 abetted possession of **methamphetamine**, a controlled substance, without a prescription.

9 THIRD CAUSE FOR DISCIPLINE

10 (Possession of Drug Paraphernalia)

11 15. Respondent's application is subject to denial under the following section(s) of the
12 Code: 480(a)(3) by reference to section 4301(j) and/or (o) of the Code, and/or Health and Safety
13 Code section 11364; and/or 4300(c) by reference to section 4301(j) and/or (o) of the Code,
14 and/or Health and Safety Code section 11377, in that Respondent, as described in paragraph 13,
15 possessed, conspired to possess, and/or assisted in or abetted possession of drug paraphernalia.

16 FOURTH CAUSE FOR DENIAL OF APPLICATION

17 (Unprofessional Conduct)

18 16. Respondent's application is subject to denial under the following section(s) of the
19 Code: 480(a)(3) by reference to 4301; and/or 4300(c) by reference to 4301, in that, as described
20 in paragraphs 13 to 15, Respondent engaged in unprofessional conduct.

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24 PRAYER

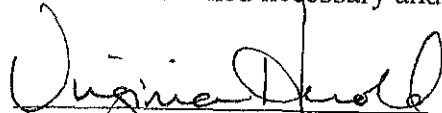
25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Board of Pharmacy issue a decision:

27 1. Denying the application of Gina Michelle Nguyen (Respondent) for a Pharmacy
28 Technician License;

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

DATED: 10/25/12



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

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