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9	BEFORE THE BOARD OF PHARMACY
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
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12	In the Matter of the Statement of Issues Against: Case No. 3241
13	PETER CHAU HOANG MAI 6041 Doyle Drive STATEMENT OF ISSUES
14	Huntington Beach, CA 92647
15	Deeperdent
16	Respondent.
17	
18	Complainant alleges:
19	PARTIES
20	1. Virginia Herold (Complainant) brings this Statement of Issues solely in
21	her official capacity as the Executive Officer of the Board of Pharmacy, Department of
22	Consumer Affairs.
23	2. On or about July 13, 2007, the Board of Pharmacy, Department of
24	Consumer Affairs received an application for a Pharmacist License from Peter Chau Hoang Mai
25	(Respondent). On or about May 15, 2007, Peter Chau Hoang Mai certified under penalty of
26	perjury to the truthfulness of all statements, answers, and representations in the application. The
27	Board denied the application on June 3, 2008.
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## LICENSE HISTORY

2	3. On August 28, 1986, the Board of Pharmacy (the Board), issued Original
3	Pharmacist License No. RPH 40408 to Peter Chau Hoang Mai. On March 30, 1990, the Board
4	issued Pharmacy Permit No. PHY-36296 to Respondent to do business as M.N. Pharmacy.
5	4. On January 19, 2000, a First Amended Accusation in Case No. 1824 was
6	filed against Respondent and his pharmacy for unprofessional conduct.
.7	5. The First Amended Accusation in Case No. 1824 resulted in Respondent's
8	surrender of both his pharmacist license and pharmacy permit. The Decision of the Board
9	adopting the stipulated surrender was issued on May 10, 2000 and became effective on June 9,
10	2000.
11	6. On March 10, 2004, the Board of Pharmacy received an application for a
12	pharmacist license from Peter Chau Hoang Mai (Respondent.) The Board denied the application
13	for licensure on September 2, 2004.
14	7. Statement of Issues Case No. 2820 was filed on January 31, 2005
15	following Respondent's appeal of the denial of his application for licensure on September 2,
16	2004. An administration hearing in Statement of Issues Case No. 2820 was held before
17	Administrative Law Judge Eric Sawyer on May 13, 2005. Following the hearing, the Board
18	issued a Decision and Order denying Respondent's application for a pharmacist's license. The
19	decision became effective on September 16, 2005.
20	JURISDICTION
21	10. This Statement of Issues is brought before the Board under the authority of
22	the following laws. All section references are to the Business and Professions Code unless
23	otherwise indicated.
24	11. Code section 4300 states, in pertinent part:
_25	(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
26	applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or
27	conditions not contrary to public policy
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12. Code section 475 states, in pertinent part: 1 2 (a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of: 3 4 (2) Conviction of a crime. (3) Commission of any act involving dishonesty, fraud or deceit with the intent to 5 substantially benefit himself or another, or substantially injure another. 6 (4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license. 7 8 Code section 480 states, in pertinent part: 13. 9 (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following: 10 (1) Been convicted of a crime. A conviction within the meaning of this 11 section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the 12 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 13 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. 14 15 (2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another. 16 (A) Done any act that if done by a licentiate of the business or (3) profession in question, would be grounds for suspension or revocation of 17 license. 18 (B) The board may deny a license pursuant to this subdivision only 19 if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made. 20 14. Code section 482 states, in pertinent part: 21 Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when: 22 (a) Considering the denial of a license by the board under Section 480 .... 23 24 111 25 111 26 111 27 111 28 111

15. Section 493 of the Code states, in pertinent part:

. 1	15. Section 495 of the Code states, in pertinent part.
2	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 or to
3	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 been
4	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
5	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
6 7	the 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 question
8	16. California Code of Regulations, Title 16, section 1769 states, in pertinent part:
9	
10	(a) When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will
11	consider the following criteria:
12	(1) The nature and severity of the act(s) or offense(s) under consideration as
13	grounds for denial.
14	(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and
15	Professions Code.
16	(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
17	(4) Whether the applicant has complied with any terms of parole, probation,
18	restitution or any other sanctions lawfully imposed against the applicant.
19	(5) Evidence, if any, of rehabilitation submitted by the applicant.
20	17. California Code of Regulations, Title 16, section 1770 states:
21	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
22	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
23	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
24	consistent with the public health, safety, or welfare
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1	FACTS
2	18. Respondent was previously disciplined in Accusation Case No. 1824
<sup>°</sup> 3	which resulted in Respondent's surrender of both his pharmacist license and pharmacy permit.
4	The Decision of the Board adopting the stipulated surrender was issued on May 10, 2000 and
5	became effective on June 9, 2000.
6	19. The Decision in Accusation Case No. 1824 stated, in pertinent part, as
7	follows:
8	7. RESPONDENT further agrees that with the adoption by the
9	Board of his license and permit surrenders, RESPONDENT may not petition the Board for reinstatement of the surrendered license and/or permit. Should
10	RESPONDENT at any time after this surrender ever reapply to the Board for licensure as a Pharmacist, RESPONDENT must meet all current requirements for
11	the licensure including, but not limited to, filing a current application, meeting all current educational requirements, and taking and passing any and all written
12	examinations required of new applicants, including, but not limited to, the Law exam.
13	9. RESPONDENT understands that should he ever reapply for
14	licensure as a Pharmacist, or should he ever apply for any other licensure issued by the Board, for the purpose of any Statement of Issues or other proceeding seeking to deny such application or reapplication, the BOARD shall deem that
15 16	each of the following allegations and also the following Determination of Issues from the First Amended Accusation in case no. 1824 to be true and correct and admitted by RESPONDENT:
.17	Admissions Deemed True on Reapplication
18	Criminal Conviction for Possession of Cocaine
19	RESPONDENT has been convicted of a crime substantially related
20	to the qualifications, functions and duties of a licensee, in that on June 18, 1997, in the Municipal Court of Long Beach Judicial District, Los Angeles County, in a case entitled People v. Hoang Chau Peter Mai, no. NA032429, RESPONDENT
21	was convicted, on his plea of nolo contendere, of a violation of Health and Safety Code section 11350, subdivision (a) [possession of cocaine.]
22	
23	Audit Shortage - Failure to Maintain Records and a Current Inventory
24	RESPONDENT failed to keep a complete, accurate and current inventory or complete accountability of a controlled substance and dangerous drug, by reason of the following facts:
25	First Audit - 1992 -93
26	(1) Commencing on December 9, 1993, Inspectors from the
27	Board performed an audit of RESPONDENT PHARMACY concerning certain controlled substances, including Tyl. Cod. #4 and Emp. Cod. #4. The period
28	covered by said audit was from March 9, 1992 to December 9, 1993 (hereinafter

1 2		"first audit period.") During the period or purchased and disposed by preso Codeine #4. Said audit shall herein	cription or sale controlled subs	stances, including
3		(2) Upon request b	y the Board Inspectors, RESP	ONDENT on
4		behalf of RESPONDENT PHARM acquisition of Codeine #4 during th 4081.	IACY could not produce recon	ds of the
5			s were as follows:	
6				
7		AUDIT STEP	<u>CODEINE #4</u>	
8		Beginning Inventory (March 9, 1992)	3,251	
9		Acquisitions During Audit Period	102,800	
10		Subtotal	106,051	
11		Less Dispositions	49,555	
12		(rxs, refills)		
13	•		FC 40C	
14		Amount to be Accounted for	56,496	•
15		Less Current	1,670	
16		Inventory (December 9, 1993)	۰. 	
17		Shortage	54,826	
18		Percent Shortage	97%	
19			T and RESPONDENT PHAR	
20		of them, failed to completely and a controlled substances and dangero	accurately account for the abo us drugs during the first audit	period.
21	-	Sale of Controlled Substances		
22		(1) During the sec	cond drug audit, March 14, 19	94 to March 24,
23		1995, RESPONDENTS dispensed such prescriptions, 123, or 100% v	vere issued by Gary B. Hump	hrey, M.D.
24		(2) Dr. Humphrey	y's license to practice medicin	e was revoked by
25		the Medical Board of California of RESPONDENT PHARMACY we	reoruary 27, 1994, and RES ere aware of this fact.	
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1	Illegal Distribution of Drug Samples
2	On May 6, 1997, approximately 578 separate manufacturer's sample containers of dangerous drugs and controlled substances were found on
3	the premises at RESPONDENT PHARMACY. By being stored on the premises, these samples were deemed available for sale.
4	
5	<b>Determination of Issues - Deemed Admitted if Reapplication</b>
6	RESPONDENT and also RESPONDENT PHARMACY are subject to discipline by the Board pursuant to Code sections 4300, subdivisions
7	(a) and (b) and 4301, for the following unprofessional conduct:
8	Criminal Conviction for Possession of Cocaine
9	As defined in section 4301, subdivision (1) and 490 of that Code, in that Respondent Mai has been convicted of a crime substantially related to the
10	qualifications, functions, or duties of a licensee, in violation of law, as set forth
11	Audit Shortage - Failure to Maintain Records and a Current Inventory
12	As defined in section 4301, subdivisions (j) and (o) of the Code, by
13	reason of violations of section 4081, subdivisions (a) and (b) of the Code, as interpreted by State Regulation section 1718; violations of Health and Safety
14	Code section 11205 and 11179; and violations of 21 U.S.C. section 827, subdivisions (a)(3) and 21 C.F.R. section 1304.04, subdivision (h), in that
15	RESPONDENTS, and each of them, failed to keep a complete, accurate and current inventory of the said controlled substances and dangerous drugs, as set
16	forth above.
17	Sale of Controlled Substances
18	As defined in Code section 4301, subdivisions (j) and (o), by reason a violation of Health and Safety Code section 11352, in that each
19	RESPONDENT sold controlled substances which were narcotics, as set forth above.
20	Illegal Distribution of Drug Samples
21	As defined in Code section 4301, subdivision (o), in that each RESPONDENT has violated, directly or indirectly, federal regulations governing
22	pharmacy; in that they have violated Title 21, Code of Federal Regulations, section 503, subdivisions $(d)(2)(A)$ and $(d)(3)(A)$ in conjunction with section 503,
23	subdivision (c)(1) for distribution of drug samples as set forth above.
24	RESPONDENT understands and agrees that he owes no costs now, but if he ever reapplies to the Board for a license as a Pharmacist, the costs incurred
25	by Complainant in the amount of \$5,000 will become due and owing and need to be paid in installments during probation if his reapplication is granted (unless, at
26	the time of reapplication RESPONDENT and Complainant negotiate and agree upon a lesser amount which is approved at the time by the Board.)
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1	FIRST CAUSE FOR DENIAL OF APPLICATION
2	(June 18, 1997 Substantially Related Criminal Conviction -
3	Possession of Controlled Substance Cocaine)
4	20. Respondent's application is subject to denial under Code section
5	480(a)(1), in that on or about June 18, 1997, in a criminal proceeding entitled People v. Hoang
6	Chau Peter Mai in Los Angeles Superior Court - Long Beach Judicial District, Case Number
7	NA032429, Respondent was convicted by plea of nolo contendere in Health & Safety Code
8	section 11350 (a) (possession of a controlled substance - cocaine), as is detailed in paragraph 19,
9	above.
10	SECOND CAUSE FOR DENIAL OF APPLICATION
11	(Act Involving Dishonesty, Fraud or Deceit With Intent to Benefit Self or Other)
12	21. Respondent's application is subject to denial under Code section 480(a)(2)
13	for acts of dishonesty, fraud or deceit with intent to benefit himself or others with regard <u>both</u> to
14	his sale of 123 prescriptions for Codeine #4 based on what he knew to be illegal and invalid
15	prescriptions from a doctor whose license had been revoked and his illegal distribution of drug
16	samples, which he has admitted, as is detailed in paragraph 19, above.
17	THIRD CAUSE FOR DENIAL OF APPLICATION
18	(Act Involving Dishonesty, Fraud or Deceit With Intent to Benefit Self or Other)
19	22. Respondent's application is subject to denial pursuant to Code section 480
20	(a)(2), in that Respondent committed a dishonest act with the intent to substantially benefit
21	himself. Respondent submitted an Application to the Board for Pharmacist License, that he
22	executed on May 15, 2007 and certified under penalty of perjury to the truth and accuracy of all
23	statements. Question No. 17 of the application asked if Respondent had ever had an application
24	for a pharmacist license or an intern permit denied in this state or any other state. Question No.
25	17 stated "If 'yes,' attach a statement of explanation." Respondent answered "No" to Question
26	No. 17 when in fact, his March 10, 2004 application for a pharmacist license was denied.
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1	Respondent appealed the denial and the matter of the Statement of Issues Case No. 2820 went to
2	hearing on May 13, 2005. The Decision to affirm the denial of Respondent's application for
3	pharmacist license became effective September 16, 2005.
4	FOUTH CAUSE FOR DENIAL OF APPLICATION
5	(Acts as Grounds for Discipline of Licentiate)
6	23. Respondent's application is subject to denial under section 480(a)(3) in
7	that Respondent's illegal and/or criminal acts or acts in violation of pharmacy laws and
8	regulations set forth above constituted acts which would constitute cause for discipline and, in
9	fact, did result in the surrender of his pharmacist license and pharmacy permit, as is detailed in
10	paragraph 19, above.
11	24. Respondent's application is subject to denial under section 480(a)(3) in
12	that failure to disclose the denial of his March 10, 2004 application for a pharmacist's license
13	constitutes an act which if done by a licentiate would constitute cause for discipline pursuant to
14	Code section 4300.
15	PRAYER
	<b>PRAYER</b> WHEREFORE, Complainant requests that a hearing be held on the
15	
15 16	WHEREFORE, Complainant requests that a hearing be held on the
15 16 17	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:
15 16 17 18	<ul> <li>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:</li> <li>1. Denying the application of Peter Chau Hoang Mai for a Pharmacist</li> </ul>
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15 16 17 18 19 20	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 Peter Chau Hoang Mai for a Pharmacist License; 2. Taking such other and further action as deemed necessary and proper.
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