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8	Attorneys for Complainant			
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	BEFORE THE BOARD OF PHARMACY			
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA			
11				
12	In the Matter of the Statement of Issues Against: Case No. 3830			
13				
14	DINH-THUAN PHAMSTATEMENT OF ISSUES7247 Hagmann Street			
15	San Diego, CA 92114			
16	Respondent.			
17	Complainant alleges:			
18	PARTIES			
19	1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official			
20	capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.			
21	2. On or about March 11, 2009, the Board of Pharmacy, Department of Consumer			
22	Affairs received an application for a Pharmacy Technician Registration from Dinh-Thuan Pham			
23	(Respondent). On or about December 18, 2008, Dinh-Thuan Pham certified under penalty of			
24	perjury to the truthfulness of all statements, answers, and representations in the application. The			
25	Board denied the application on May 3, 2010.			
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1	JURISDICTION					
2	3. This Statement of Issues is brought before the Board of Pharmacy (Board),					
3	Department of Consumer Affairs, under the authority of the following laws. All section					
4	references are to the Business and Professions Code (Code) unless otherwise indicated.					
5	4. Section 4300, subdivision (c) of the Code states, in pertinent part, that the Board may					
6	refuse a license to any applicant guilty of unprofessional conduct. The Board may, in its sole					
7	discretion, issue a probationary license to any applicant for a license who is guilty of					
8	unprofessional conduct and who has met all other requirements for licensure.					
9	STATUTORY PROVISIONS					
10	5. Section 4301 of the Code states:					
11	The board shall take action against any holder of a license who is guilty of					
12	unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:					
13	not minited to, any of the following.					
14	(1) The conviction of a crime substantially related to the qualifications,					
15 16	functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this					
17	state regulating controlled substances of on a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall					
18	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					
19	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					
20	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					
21	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					
22	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					
23	Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or					
24	dismissing the accusation, information, or indictment.					
25						
26	6. Section 475 of the Code states:					
27	(a) Notwithstanding any other provisions of this code, the provisions of this					
28	division shall govern the denial of licenses on the grounds of:					
	2					
	STATEMENT OF ISSUES					

(1) Knowingly making a false statement of material fact, or knowingly 1 omitting to state a material fact, in an application for a license. 2 (2) Conviction of a crime. 3 (3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another. 4 5 (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. 6 7 (c) A license shall not be denied, suspended, or revoked on the grounds of a 8 lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits. 9 7. Section 480 of the Code states: 10 11 (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following: 12 (1) Been convicted of a crime. A conviction within the meaning of this 13 section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment 14 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 15 made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. 16 (2) Done any act involving dishonesty, fraud, or deceit with the intent to 17 substantially benefit himself or herself or another, or substantially injure another. 18 (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. 19 (B) The board may deny a license pursuant to this subdivision only if the 20 crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made. 21 22 (c) A board may deny a license regulated by this code on the ground that the 23 applicant knowingly made a false statement of fact required to be revealed in the application for the license. 24 8. Section 482 of the Code states: 25 26 Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when: 27 (a) Considering the denial of a license by the board under Section 480; or 28

STATEMENT OF ISSUES

1	(b) Considering suspension or revocation of a license under Section 490.			
2	2 Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.			
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4	REGULATORY PROVISIONS			
5	9. California Code of Regulations, title 16, section 1768 states:			
6	(a) Where the board has denied an application for a license, the earliest date on			
7	which the applicant may reapply for a license is one year after the effective date of the denial.			
8	(b) All competent evidence of rehabilitation presented will be considered upon			
9	a reapplication. The board shall use the criteria listed in section 1769 when considering evidence of rehabilitation.			
10	10. California Code of Regulations, title 16, section 1769 states:			
11	(a) When considering the denial of a facility or personal license under Section			
12	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 consider			
13	the following criteria:			
14	(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.			
15 16	(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 Professions Code.			
17	(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).			
18 19	(4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.			
20	(5) Evidence, if any, of rehabilitation submitted by the applicant.			
21	••••			
22	11. California Code of Regulations, title 16, section 1770 states:			
23	For the purpose of denial, suspension, or revocation of a personal or facility			
24	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			
25	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			
26	functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.			
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CAUSE FOR DENIAL OF APPLICATION

(June 5, 2007 Criminal Conviction for Assault on April 15, 2007)

12. Respondent's application for registration as a pharmacy technician is subject to denial under sections 480, subdivisions (a)(1) and (a)(3), and 4301, subdivision (l) of the Code in that Respondent was convicted of crimes that are substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

a. On or about June 5, 2007, in a criminal proceeding entitled *People of the State* of California vs. Dinthuan Pham, in San Diego County Superior Court Case number SCD206342, Respondent was convicted on his plea of guilty to violating Penal Code section 245, subdivision (a)(1), assault with force likely to produce great bodily injury, a felony.

b. As a result of the conviction, on or about July 3, 2007, Respondent was
sentenced to three years formal probation, 180 days in custody (stayed), 30 days participation in a
public work service program, and payment of \$940 in fees and fines. The plea agreement
allowed Respondent to file a motion to reduce the felony conviction to a misdemeanor after two
years. In a review hearing on February 2, 2009, the court granted Respondent's motion to reduce
conviction to a misdemeanor pursuant to Penal Code section 17b. Respondent's Petition for
Dismissal was granted by the court on May 26, 2010.

c. The circumstances that led to the conviction are that on or about April 15, 2007,
Respondent took part in an assault on a male victim outside an East San Diego restaurant.
Respondent was arrested by the San Diego Police Department on or about May 10, 2007.

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1	PRAYER			
2	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,			
3	and that following the hearing, the Board of Pharmacy issue a decision:			
4	1. Denying the application of Dinh-Thuan Pham for a Pharmacy Technician			
5	Registration;			
6	2. Taking such other and further	action as deemed necessary and proper.		
7	DATED: 12/30/10	$()$ \cdot \cdot $()$ $()$		
8	DATED: <u>12/30/10</u>	VIRGINIA HEROLD		
9		Executive Officer Board of Pharmacy		
10		Department of Consumer Affairs State of California		
11		Complainant		
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