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

12 In the Matter of the Statement of Issues
Against:
13 **DINH-THUAN PHAM**
14 **7247 Hagmann Street**
15 **San Diego, CA 92114**
16 Respondent.

Case No. 3830
STATEMENT OF ISSUES

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 (1) Knowingly making a false statement of material fact, or knowingly
2 omitting to state a material fact, in an application for a license.

3 (2) Conviction of a crime.

4 (3) Commission of any act involving dishonesty, fraud or deceit with the
5 intent to 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
7 profession in question, would be grounds for suspension or revocation of license.

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9 (c) A license shall not be denied, suspended, or revoked on the grounds of a
10 lack of good moral character or any similar ground relating to an applicant's
11 character, reputation, personality, or habits.

12 7. Section 480 of the Code states:

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

15 (1) Been convicted of a crime. A conviction within the meaning of this
16 section means a plea or verdict of guilty or a conviction following a plea of nolo
17 contendere. Any action that a board is permitted to take following the establishment
18 of a conviction may be taken when the time for appeal has elapsed, or the judgment
19 of conviction has been affirmed on appeal, or when an order granting probation is
20 made suspending the imposition of sentence, irrespective of a subsequent order under
21 the provisions of Section 1203.4 of the Penal Code.

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

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

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

. . . .

(c) A board may deny a license regulated by this code on the ground that the
applicant knowingly made a false statement of fact required to be revealed in the
application for the license.

8. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate
the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

1 (b) Considering suspension or revocation of a license under Section 490.

2 Each board shall take into account all competent evidence of rehabilitation
3 furnished by the applicant or licensee.

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
8 the denial.

9 (b) All competent evidence of rehabilitation presented will be considered upon
10 a reapplication. The board shall use the criteria listed in section 1769 when
11 considering evidence of rehabilitation.

12 10. California Code of Regulations, title 16, section 1769 states:

13 (a) When considering the denial of a facility or personal license under Section
14 480 of the Business and Professions Code, the board, in evaluating the rehabilitation
15 of the applicant and his present eligibility for licensing or registration, will consider
16 the following criteria:

17 (1) The nature and severity of the act(s) or offense(s) under consideration as
18 grounds for denial.

19 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
20 under consideration as grounds for denial under Section 480 of the Business and
21 Professions Code.

22 (3) The time that has elapsed since commission of the act(s) or crime(s)
23 referred to in subdivision (1) or (2).

24 (4) Whether the applicant has complied with any terms of parole, probation,
25 restitution or any other sanctions lawfully imposed against the applicant.

26 (5) Evidence, if any, of rehabilitation submitted by the applicant.

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28 11. 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.

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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. Dintluan 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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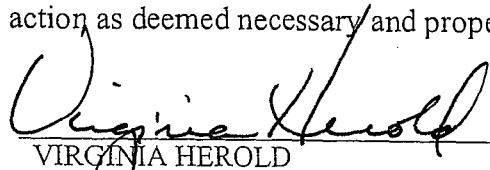
PRAYER

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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 Dinh-Thuan Pham for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 12/30/10



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

SD2010702493