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

12 In the Matter of the Statement of Issues
13 Against:

Case No. 3997

14 **KHANH PHI NGUYEN**
16166 Mount Baden Powell Street
15 Fountain Valley, CA 92708

FIRST AMENDED
STATEMENT OF ISSUES

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this First Amended Statement of Issues solely
21 in her official capacity as the Executive Officer of the Board of Pharmacy, Department of
22 Consumer Affairs.

23 2. On or about June 28, 2010, the Board of Pharmacy, Department of Consumer Affairs
24 received an application for a Pharmacy Technician Registration from Khanh Phi Nguyen
25 (Respondent). On or about June 22, 2010, Khanh Phi Nguyen certified under penalty of perjury
26 to the truthfulness of all statements, answers, and representations in the application. The Board
27 denied the application on November 22, 2010.

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1 **JURISDICTION**

2 3. This First Amended Statement of Issues is brought before the Board of Pharmacy
3 (Board), 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 480 of the Code states:

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

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

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

17 (3) (A) Done any act that if done by a licentiate of the business or profession in
18 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 crime
20 or act is substantially related to the qualifications, functions, or duties of the business
21 or profession for which application is made. . . .

22 5. Section 4300, subdivision (c) of the Code states "The board may refuse a license to
23 any applicant guilty of unprofessional conduct."

24 **STATUTORY PROVISIONS**

25 6. Section 475 of the Code states:

26 (a) Notwithstanding any other provisions of this code, the provisions of this
27 division shall govern the denial of licenses on the grounds of:

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

(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.

(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.

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7. 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
- (b) Considering suspension or revocation of a license under Section 490.

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

8. Section 493 of the Code states:

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 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 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 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 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.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

9. Section 4301 of the Code states:

The board shall take action against any holder of a license who is guilty of 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:

....

(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.

....

(l) The conviction of a crime substantially related to the qualifications, 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 state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall 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 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 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

1 August 1, 2007, Respondent committed an act of dishonesty, fraud and deceit with the intent to
2 substantially benefit himself, as detailed in paragraph 12, above.

3 **THIRD CAUSE FOR DENIAL OF APPLICATION**

4 **(Commission of Acts Which if Done by a Licensee Would be**
5 **Grounds for Suspension or Revocation of License)**

6 14. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
7 of the Code in that he committed acts, that if done by a licensed pharmacy technician, would be
8 grounds for suspension or revocation of the license. The circumstances are as follows:

9 a. On or about July 20, 2009, as detailed in paragraph 12, above, Respondent
10 was convicted of a crime substantially related to the qualifications, functions, and duties of a
11 licensed pharmacy technician, in violation of section 4301, subdivision (l) of the Code.

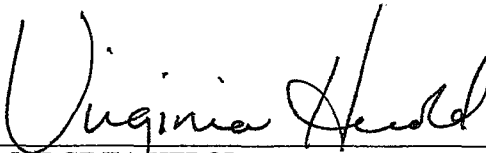
12 b. On or about August 1, 2007, as detailed in paragraph 12, above, Respondent
13 committed an act involving moral turpitude, dishonesty, fraud, and deceit in violation of section
14 4301, subdivision (f) of the Code.

15 **PRAYER**

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

- 18 1. Denying the application of Khanh Phi Nguyen for a Pharmacy Technician
19 Registration;
20 2. Taking such other and further action as deemed necessary and proper.

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22
23 DATED: 9/23/11



24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

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