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

12 In the Matter of the Statement of Issues Against:

13 **YEE XIONG**
14 **212 E. 11th Street**
Marysville, CA 95901

Case No. 4167

STATEMENT OF ISSUES

15 Respondent.
16

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 (Board), Department of Consumer
21 Affairs.

22 2. On or about August 25, 2010, the Board, Department of Consumer Affairs received
23 an application for a Pharmacy Technician License from Yee Xiong (Respondent). On or about
24 August 24, 2010, Respondent certified under penalty of perjury to the truthfulness of all
25 statements, answers, and representations in the application. The Board denied the application on
26 June 7, 2011.

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JURISDICTION

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2 3. This Statement of Issues is brought before the Board, Department of Consumer
3 Affairs, under the authority of the following laws. All section references are to the Business and
4 Professions Code unless otherwise indicated.

5 4. Section 475 of the Code states in relevant part:

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

8 “(2) Conviction of a crime.

9 “(4) Commission of any act which, if done by a licentiate of the business or profession in
10 question, would be grounds for suspension or revocation of license.”

11 5. Section 480 of the Code states in relevant part:

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

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

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

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

24 6. Section 490 of the Code provides, in pertinent part, that a board may suspend or
25 revoke a license on the ground that the licensee has been convicted of a crime substantially
26 related to the qualifications, functions, or duties of the business or profession for which the
27 license was issued.

28 7. Section 493 of the Code states in relevant part:

1 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
2 the department pursuant to law to deny an application for a license or to suspend or revoke a
3 license or otherwise take disciplinary action against a person who holds a license, upon the
4 ground that the applicant or the licensee has been convicted of a crime substantially related to the
5 qualifications, functions, and duties of the licensee in question, the record of conviction of the
6 crime shall be conclusive evidence of the fact that the conviction occurred....”

7 8. Section 4301 provides in relevant part:

8 “The board shall take action against any holder of a license who is guilty of unprofessional
9 conduct. Unprofessional conduct shall include, but not be limited to, any of the following:

10 “(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
11 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
12 whether the act is a felony or misdemeanor or not.

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

15 “(p) Actions or conduct that would have warranted denial of a license.”

16 **FIRST CAUSE FOR DENIAL OF APPLICATION**

17 **(Conviction of a Crime)**

18 9. Respondent's application is subject to denial under sections 480(a)(1), 480(a)(2), and
19 480 (a)(3) in that on or about June 24, 2009, in a case captioned *People vs Yee Xiong*, 2009,
20 Sutter County Superior Court, Case Number CFR09-0742, Respondent was convicted by the
21 court following Respondent's plea of nolo contendere to Penal Code section 487(a), grand theft,
22 a misdemeanor. The circumstances are as follows:

23 10. Respondent was an employee at Toys R Us in Marysville, California. While working
24 Respondent kept gift receipts intended for customers and illegally took merchandise matching the
25 item or items on the gift receipt. Respondent then took the merchandise to different Toys R Us
26 and obtained cash refunds, gift cards or retained the items for personal use. Respondent engaged
27 in this activity on multiple occasions causing a loss to his employer totaling

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1 \$2,281.00. Respondent's activities were discovered through the Toys R Us employee fraud
2 detection program.

3 **SECOND CAUSE FOR DENIAL OF APPLICATION**

4 **(Cause for Denial If Done by Licensee)**

5 11. Respondent's application is subject to denial under sections 475(a)(4), 480(a)(3) and
6 4301(p) on grounds that the acts of Respondent would be grounds for denial if done by a licensee.

7 12. Paragraphs 9 and 10 are incorporated herein as though set forth at length.

8 Respondent's acts if done by a licensee would result in the revocation, suspension or other
9 discipline by the Board and as such are grounds for denial of the Respondent's application for a
10 license.

11 **THIRD CAUSE FOR DENIAL OF APPLICATION**

12 **(Unprofessional Conduct-Dishonesty)**

13 13. Respondent's application is subject to denial under sections 480(a)(2) and 4301(f) on
14 grounds that Respondent engaged in acts involving moral turpitude, dishonesty, fraud, deceit, or
15 corruption.

16 14. Paragraphs 9 and 10 are incorporated herein as though set forth at length. In
17 performing the acts described herein and engaging in criminal conduct, Respondent has
18 committed acts involving moral turpitude, dishonesty, deceit and corruption and as such are
19 grounds for the denial of Respondent's application for a license.

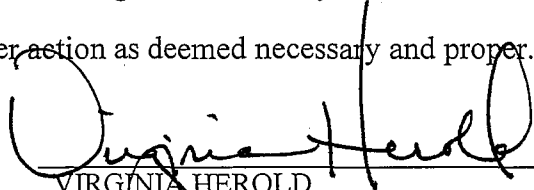
20 **PRAAYER**

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

- 23 1. Denying the application of Yee Xiong for a Pharmacy Technician License;
24 2. Taking such other and further action as deemed necessary and proper.

25 DATED: 1/21/12

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28 10778179


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