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

10 In the Matter of the Statement of Issues Against:

Case No. 4380

11 **GINA MICHELLE NGUYEN**

12 Respondent.

STATEMENT OF ISSUES

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16 Complainant alleges:

17 **PARTIES**

18 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

20 2. On or about February 7, 2012, the Board of Pharmacy, Department of Consumer
21 Affairs received a Pharmacy Technician Application from Gina Michelle Nguyen (Respondent).
22 On or about January 26, 2012, Respondent certified under penalty of perjury the truthfulness of
23 all statements, answers, and representations in the application. The Board denied the application
24 on or about July 3, 2012.

25 **JURISDICTION**

26 3. This Statement of Issues is brought before the Board of Pharmacy (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code (Code) unless otherwise indicated.

1 STATUTORY AND REGULATORY PROVISIONS

2 4. Section 4300, subdivision (c), of the Code states:

3 “(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The
4 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
5 guilty of unprofessional conduct and who has met all other requirements for licensure. The board
6 may issue the license subject to any terms or conditions not contrary to public policy”

7 5. Section 480 of the Code states, in pertinent part:

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

10 “(1) Been convicted of a crime. . . . Any action which a board is permitted to take following
11 the establishment of a conviction may be taken . . . irrespective of a subsequent order under the
12 provisions of Section 1203.4 of the Penal Code.

13 . . .

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

16 “The board may deny a license pursuant to this subdivision only if the crime or act is
17 substantially related to the qualifications, functions or duties of the . . . [license].”

18 6. Section 4301 of the Code provides, in pertinent part, that “unprofessional conduct” is
19 defined to include, but not be limited to, any of the following:

20 (j) The violation of any of the statutes of this state, of any other state, or of the United
21 States regulating controlled substances and dangerous drugs.

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

24 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
25 violation of or conspiring to violate any provision or term of this chapter or of the applicable
26 federal and state laws and regulations governing pharmacy, including regulations established by
27 the board or by any other state or federal regulatory agency.

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1 7. California Code of Regulations, title 16, section 1770, states:

2 “For the purpose of denial, suspension, or revocation of a personal or facility license
3 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
4 crime or act shall be considered substantially related to the qualifications, functions or duties of a
5 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
6 licensee or registrant to perform the functions authorized by his license or registration in a manner
7 consistent with the public health, safety, or welfare.”

8 8. Health and Safety Code section 11364, in pertinent part, makes it unlawful to possess
9 an opium pipe or other paraphernalia used to inject or smoke controlled substances.

10 9. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess
11 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
12 subdivision (d), or any non-narcotic drug in Schedules III-V, absent a valid prescription.

13 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

14 10. Section 4021 of the Code states:

15 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
16 11053) of Division 10 of the Health and Safety Code.”

17 11. Section 4022 of the Code states, in pertinent part:

18 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use,
19 except veterinary drugs that are labeled as such, and includes the following:

20 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
21 prescription,’ ‘Rx only,’ or words of similar import.

22 ...

23 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
24 prescription or furnished pursuant to Section 4006.”

25 12. **Methamphetamine** is a Schedule II controlled substance as designated by Health and
26 Safety Code section 11055(d)(2) and a dangerous drug as designated by Business and Professions
27 Code section 4022. It is a stimulant drug.

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1 FIRST CAUSE FOR DENIAL OF APPLICATION

2 (Conviction of Substantially Related Crime(s))

3 13. Respondent's application is subject to denial under the following section(s) of the
4 Code: 480(a)(1); 480(a)(3) by reference to 4301(l); and/or 4300(c) by reference to 4301(l) and
5 California Code of Regulations, title 16, section 1770, for conviction of a substantially related
6 crime, in that on or about April 2, 2009, in a case titled *People v. Gina Michelle Nguyen*, Case
7 No. NM375024A in San Mateo County Superior Court, Respondent was convicted of violating
8 Health and Safety Code section 11377, subdivision (a) (Possession of controlled substance -
9 **methamphetamine**), a misdemeanor, as follows:

10 a. On or about April 15, 2008, while they were sitting in a parked car, Respondent
11 and a companion were contacted by officer(s) of the Daly City Police Department. A search of
12 the jacket worn by Respondent discovered a glass pipe with a white milky residue and a brown
13 residue that the officer(s) suspected had been used to smoke **methamphetamine**, and a cigarette
14 box containing a clear plastic baggie with a crystal powder believed to be **methamphetamine**. A
15 subsequent search of bag(s) belonging to Respondent discovered a twin beam scale with what
16 appeared to be trace amounts of **methamphetamine** on it. Respondent subsequently admitted
17 that the powder was **methamphetamine**, belonging to her. A field test of the powder confirmed
18 it to be **methamphetamine**. Officers noted that Respondent's thumb and finger had burn marks
19 characteristic of **methamphetamine** smokers. Respondent was taken into custody on suspicion
20 of violating Health and Safety Code section 11364 (Possession of drug paraphernalia) and Health
21 and Safety Code section 11377 (Possession of controlled substance - **methamphetamine**).

22 b. On or about April 17, 2008, Respondent was charged in Case No. NM375024A
23 with violating Health and Safety Code section 11377, subdivision (a) (Possession of controlled
24 substance - **methamphetamine**), a misdemeanor.

25 c. On or about April 2, 2009, Respondent was convicted of violating Health and
26 Safety Code section 11377, subdivision (a) (Possession of controlled substance -
27 **methamphetamine**), a misdemeanor. Imposition of sentence was suspended in favor of a period
28 of probation of eighteen (18) months, on terms and conditions including drug treatment.

1 SECOND CAUSE FOR DISCIPLINE

2 (Possession of Controlled Substance)

3 14. Respondent's application is subject to denial under the following section(s) of the
4 Code: 480(a)(3) by reference to section 4301(j) and/or (o) and/or section 4060 of the Code,
5 and/or Health and Safety Code section 11377; and/or 4300(c) by reference to section 4301(j)
6 and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section 11377, in that
7 Respondent, as described in paragraph 13, possessed, conspired to possess, and/or assisted in or
8 abetted possession of **methamphetamine**, a controlled substance, without a prescription.

9 THIRD CAUSE FOR DISCIPLINE

10 (Possession of Drug Paraphernalia)

11 15. Respondent's application is subject to denial under the following section(s) of the
12 Code: 480(a)(3) by reference to section 4301(j) and/or (o) of the Code, and/or Health and Safety
13 Code section 11364; and/or 4300(c) by reference to section 4301(j) and/or (o) of the Code,
14 and/or Health and Safety Code section 11377, in that Respondent, as described in paragraph 13,
15 possessed, conspired to possess, and/or assisted in or abetted possession of drug paraphernalia.

16 FOURTH CAUSE FOR DENIAL OF APPLICATION

17 (Unprofessional Conduct)

18 16. Respondent's application is subject to denial under the following section(s) of the
19 Code: 480(a)(3) by reference to 4301; and/or 4300(c) by reference to 4301, in that, as described
20 in paragraphs 13 to 15, Respondent engaged in unprofessional conduct.

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24 PRAYER

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

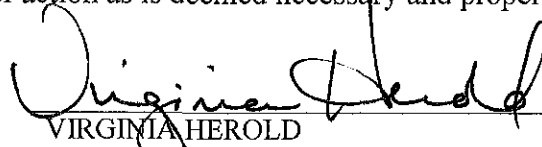
27 1. Denying the application of Gina Michelle Nguyen (Respondent) for a Pharmacy
28 Technician License;

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2. Taking such other and further action as is deemed necessary and proper.

DATED:

10/25/12



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

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