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

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

Case No. 4446

13 **TONY LE**

STATEMENT OF ISSUES

14 **Pharmacy Technician Registration**
15 **Applicant**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about March 1, 2012, the Board of Pharmacy, Department of Consumer Affairs
23 received an application for a Pharmacy Technician Registration from Tony Le (Respondent). On
24 or about January 31, 2012, Tony Le 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 August 31, 2012.

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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 of the Code provides, in pertinent part, that the board may refuse a
6 license to any applicant guilty of unprofessional conduct.

7 **STATUTORY PROVISIONS**

8 5. Section 475 of the Code states:

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

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

13 (2) Conviction of a crime.

14 (3) Commission of any act involving dishonesty, fraud or deceit with the intent
15 to substantially benefit himself or another, or substantially injure another.

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

18 (b) Notwithstanding any other provisions of this code, the provisions of this
19 division shall govern the suspension and revocation of licenses on grounds specified
20 in paragraphs (1) and (2) of subdivision (a).

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

24 6. Section 477 of the Code states:

25 As used in this division:

26 (a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,'
27 'examining committee,' 'program,' and 'agency.'

28 (b) 'License' includes certificate, registration or other means to engage in a
business or profession regulated by this code.

7. Section 480 of the Code states:

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

(1) Been convicted of a crime. A conviction within the meaning of this
section means a plea or verdict of guilty or a conviction following a plea of nolo

1 contendere. Any action that a board is permitted to take following the establishment
2 of a conviction may be taken when the time for appeal has elapsed, or the judgment
3 of conviction has been affirmed on appeal, or when an order granting probation is
4 made suspending the imposition of sentence, irrespective of a subsequent order under
5 the provisions of Section 1203.4 of the Penal Code.

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

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

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

13 (b) Notwithstanding any other provision of this code, no person shall be denied
14 a license solely on the basis that he or she has been convicted of a felony if he or she
15 has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with
16 Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
17 convicted of a misdemeanor if he or she has met all applicable requirements of the
18 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
19 person when considering the denial of a license under subdivision (a) of Section 482.

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

23 8. Section 482 of the Code states:

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

- 26 (a) Considering the denial of a license by the board under Section 480; or
- 27 (b) Considering suspension or revocation of a license under Section 490.

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

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

13 10. Section 493 of the Code states:

14 Notwithstanding any other provision of law, in a proceeding conducted by a
15 board within the department pursuant to law to deny an application for a license or to
16 suspend or revoke a license or otherwise take disciplinary action against a person who
17 holds a license, upon the ground that the applicant or the licensee has been convicted
18 of a crime substantially related to the qualifications, functions, and duties of the

1 licensee in question, the record of conviction of the crime shall be conclusive
2 evidence of the fact that the conviction occurred, but only of that fact, and the board
3 may inquire into the circumstances surrounding the commission of the crime in order
4 to fix the degree of discipline or to determine if the conviction is substantially related
5 to the qualifications, functions, and duties of the licensee in question.

6 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
7 'registration.'

8 11. Section 4301 of the Code states:

9 The board shall take action against any holder of a license who is guilty of
10 unprofessional conduct or whose license has been procured by fraud or
11 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
12 not limited to, any of the following:

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14 (1) The conviction of a crime substantially related to the qualifications,
15 functions, and duties of a licensee under this chapter. The record of conviction of a
16 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
17 States Code regulating controlled substances or of a violation of the statutes of this
18 state regulating controlled substances or dangerous drugs shall be conclusive
19 evidence of unprofessional conduct. In all other cases, the record of conviction shall
20 be conclusive evidence only of the fact that the conviction occurred. The board may
21 inquire into the circumstances surrounding the commission of the crime, in order to
22 fix the degree of discipline or, in the case of a conviction not involving controlled
23 substances or dangerous drugs, to determine if the conviction is of an offense
24 substantially related to the qualifications, functions, and duties of a licensee under this
25 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
26 contendere is deemed to be a conviction within the meaning of this provision. The
27 board may take action when the time for appeal has elapsed, or the judgment of
28 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
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
dismissing the accusation, information, or indictment.

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REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 1768 states:

(a) Where the board has denied an application for a license, the earliest date on
which the applicant may reapply for a license is one year after the effective date of
the denial.

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

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

(a) When considering the denial of a facility or personal license under Section 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 the following criteria:

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

(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.

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

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

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

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14. 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.

CAUSE FOR DENIAL OF APPLICATION

(July 29, 2010 Criminal Conviction for Aggravated Assault on November 17, 2009)

15. Respondent's application for licensure is subject to denial under sections 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that Respondent was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician. Said conviction would be a ground for discipline for unprofessional conduct under section 4301, subdivision (l) of the Code for a licensed Registered Pharmacy Technician. The circumstances are as follows:

a. On or about July 29, 2010, in a criminal proceeding entitled *People of the State of California vs. Tony Le, et al.*, in Orange County Superior Court Case number 09WF2383, Respondent was convicted on his plea of guilty to violating Penal Code section 245, subdivision

1 (a)(1), aggravated assault with a deadly weapon, a felony reduced to a misdemeanor on the
2 court's own motion, pursuant to Penal Code section 17b.

3 b. As a result of the conviction, on or about July 29, 2010, Respondent was
4 granted three years informal probation, and sentenced to 90 days in the Orange County Jail, with
5 credit for eight days. Respondent was further ordered to submit to a Fourth Amendment waiver,
6 not own any dangerous weapon, , pay fines, fees, and restitution, and to stay away from the
7 victim.

8 c. The circumstances that led to the conviction are that on or about the evening of
9 November 17, 2009, officers from the Westminster Police Department were dispatched to a local
10 church regarding an assault; the witness stated that the victim was hit with bats. Upon arrival, the
11 officers found a 15-year-old male victim lying in the grass who appeared to be in pain. The
12 victim was reluctant to cooperate with the officers. The victim was transported to a local hospital
13 where he was questioned further. The victim stated that after he got off the bus near the church,
14 he was approached by at least five subjects, four of whom were carrying baseball bats. The
15 victim ran away, but was surrounded by the subjects who beat the victim with the bats. The
16 victim went to the ground while they continued to beat him with the bats and kick him in face.
17 The officer was able to extract from the victim the name "Tony" (Respondent) as one of the
18 suspects, but the victim was afraid to provide the name of the other suspects. The following day,
19 detectives interviewed Respondent who told the detectives that he and others waited for the
20 victim to arrive at the church. The plan was to assault the victim because he had stolen money
21 from one of Respondent's friends.

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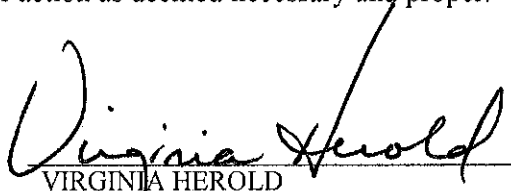
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PRAYER

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 Tony Le for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 1/7/13


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

SD2012803949