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8  
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 **TRI MINH DUONG**  
14  
15 **Pharmacist Applicant**  
16 **Respondent.**

Case No. 5504

**STATEMENT OF ISSUES**

17  
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 May 19, 2014, the Board of Pharmacy, Department of Consumer Affairs  
23 received an application for a Pharmacist License from Tri Minh Duong (Respondent). On or  
24 about March 4, 2014, Tri Minh Duong 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 May 19, 2015.

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

4 . . . .  
5 7. Section 482 of the Code states:

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

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

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

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

12 8. Section 4300 of the Code states:

13 (a) Every license issued may be suspended or revoked.

14 . . . .

15 (c) The board may refuse a license to any applicant guilty of  
16 unprofessional conduct. The board may, in its sole discretion, issue a probationary  
17 license to any applicant for a license who is guilty of unprofessional conduct and who  
18 has met all other requirements for licensure. The board may issue the license subject  
19 to any terms or conditions not contrary to public policy, including, but not limited to,  
20 the following:

21 (1) Medical or psychiatric evaluation.

22 (2) Continuing medical or psychiatric treatment.

23 (3) Restriction of type or circumstances of practice.

24 (4) Continuing participation in a board-approved rehabilitation program.

25 (5) Abstention from the use of alcohol or drugs.

26 (6) Random fluid testing for alcohol or drugs.

27 (7) Compliance with laws and regulations governing the practice of  
28 pharmacy.

. . . .

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.

10. Section 4203 of the Code states:

(b) Upon receipt of an application for a license and the applicable fee, the board shall make a thorough investigation to determine whether the applicant is qualified for the license being sought. The board shall also determine whether this article has been complied with, and shall investigate all matters directly related to the issuance of the license. . . . The board shall deny an application for a license if the applicant or the premises for which application for a license is being made do not qualify a license under this article.

REGULATIONS

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.

FACTS

12. On or about January 3, 2007, Respondent's former boss at Baskin Robbins in Tustin California (hereinafter referred to as BR) called for police assistance because Respondent was inside the store and was waiting for him to arrive at the store. Respondent's former boss had recently terminated Respondent's employment. He became concerned about possible retribution by Respondent because after being terminated, Respondent made an unusually high number of telephone calls to his cell phone and requested a face-to-face meeting at BR to discuss Respondent's recent termination.

13. On or about January 3, 2007, an Orange County Police Department officer arrived at BR and observed Respondent inside the store casually talking to an employee. Upon contact with Respondent, the officer immediately noticed that Respondent appeared to be concealing a weapon under his shirt. Respondent admitted to the officer that he had a gun partially tucked under his pants' waistband and concealed under his shirt. The officer reached under Respondent's shirt and seized a blue steel 9 mm semi-automatic handgun with an empty ammunition magazine inserted into the gun. The officer later conducted a computer check on the handgun and determined that Respondent was not legally authorized to possess or conceal on his person the handgun.

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1 Respondent was arrested and taken into custody for unlawful possession of a concealed gun in a  
2 public place.

3 14. On or about July 20, 2007, in a criminal proceeding entitled *People v. Tri Minh*  
4 *Duong*, in Orange County Superior Court, Central District, Case No. 07CFO117FA, Respondent  
5 was convicted, on his plea of guilty, of violating Penal Code section 12021, subdivision (s)  
6 (Illegal Possession of Firearm), a felony. Pursuant to a plea agreement and upon Respondent's  
7 completion of at least 18 months criminal probation with no new law violations and no probation  
8 violations, the felony status of the crime was reduced to a misdemeanor status on or about  
9 May 15, 2009. The Court set aside Respondent's guilty plea, entered Respondent's not-guilty  
10 plea and dismissed all criminal charges in the matter on or about December 15, 2014, pursuant to  
11 Penal Code section 1203.4. Respondent did disclose this prior conviction on his pending  
12 application for licensure as a pharmacist.

13 **FIRST CAUSE FOR DENIAL OF APPLICATION**

14 **(Unprofessional Conduct – Acts Which Would be Grounds for Disciplinary Action  
15 If Done by a Licensed Pharmacist)**

16 15. Respondent's application is subject to denial for unprofessional conduct under Code  
17 section 480(a)(3)(A) in that on or about January 3, 2007, he engaged in conduct that, if done by a  
18 licensed pharmacist, would be grounds for disciplinary action pursuant to Business and  
19 Professions Code sections 4301 (general unprofessional conduct) and 4301 (f) (unprofessional  
20 conduct involving dishonesty, fraud or deceit) in that he unlawfully possessed and concealed a  
21 semi-automatic handgun in a public place, as described above in paragraphs 12 and 13 which are  
22 incorporated herein by reference.

23 **SECOND CAUSE FOR DENIAL OF APPLICATION**

24 **(Unprofessional Conduct - Unlawful Possession and Concealment  
25 of a Semi-Automatic Handgun on January 3, 2007)**

26 16. Respondent's application is subject to denial for unprofessional conduct under Code section  
27 480(a)(2) in that on or about January 3, 2007, he did an act involving dishonesty, fraud or deceit  
28 with the intent to substantially benefit himself or another, or substantially injure another in that he

1 unlawfully possessed and concealed a semi-automatic handgun in a public place, as described  
2 above in paragraphs 12 and 13 which are incorporated herein by reference.

3 **DISCIPLINARY CONSIDERATIONS**

4 17. To determine whether a pharmacist license, if any, should be issued to Respondent  
5 and whether probationary status or conditions, if any, should be imposed on said license based  
6 upon the causes for denial alleged above, pursuant to California Code of Regulations, title 16,  
7 section 1445, Complainant alleges:

8 a. In a prior disciplinary action entitled "*In the Matter of the Statement of Issues*  
9 *Against Tri Minh Duong*," Case No. 3195, the Board of Pharmacy denied Respondent's  
10 application for licensure as a pharmacy technician, effective October 8, 2009. The Board adopted  
11 as its Decision in the matter the written proposed decision of Administrative Law Judge (ALJ)  
12 Greer Knopf who presided over the administrative hearing on the matter on May 27, 2009. The  
13 Decision denied Respondent's application for a pharmacy technician license based upon, but not  
14 limited to, the following factual findings and legal conclusions.

15 b. Respondent's unlawful possession and concealment of a semi-automatic  
16 handgun on January 3, 2007, described above in paragraphs 12 and 13, was a very serious public  
17 offense involving a deadly weapon and was substantially related to the qualifications, functions,  
18 and duties of a pharmacy technician. Further, Respondent did not present any evidence to  
19 demonstrate that he had dealt with the emotional issues that may have caused him to engage in  
20 such unlawful conduct.

21 c. It was not in the public interest to grant Respondent's application for a  
22 pharmacy technician license. Respondent needed more time to establish a track record as a law  
23 abiding citizen and Respondent should not yet be trusted with a pharmacy technician license.

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 Tri Minh Duong for a Pharmacist License; and,

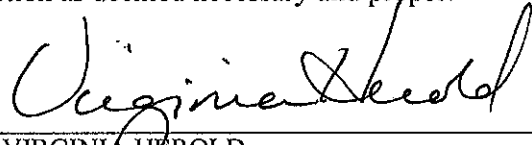
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2. Taking such other and further action as deemed necessary and proper.

DATED: \_\_\_\_\_

9/21/15



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

SD2015801329