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

11 In the Matter of the Statement of Issues
Against:

Case No. 5518

12 **RICHARD MINH LA**

STATEMENT OF ISSUES

13 **Pharmacy Technician Registration**
14 **Applicant**

15 Respondent.

16
17 Virginia Herold ("Complainant") alleges:

18 **PARTIES**

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

21 2. On or about May 20, 2011, the Board received an application for a Pharmacy
22 Technician License from Richard Minh La ("Respondent"). On or about December 15, 2011, the
23 Board denied the application and Respondent requested to appeal the Board's denial of his
24 application for registration as a pharmacy technician. On or about August 30, 2012, the Board
25 filed a Statement of Issues. On or about September 15, 2012, Respondent withdrew his request
26 for a hearing and the Statement of Issues was withdrawn by the Board. On or about December
27 30, 2014, the Board received a second application for a Pharmacy Technician License from
28 Respondent. On or about October 3, 2014, Respondent certified under penalty of perjury to the

1 truthfulness of all statements, answers, and representations in the application. The Board denied
2 the application on June 12, 2015. On or about June 19, 2015, the Board received Respondent's
3 request for hearing and his appeal of the Board's denial of licensure.

4 JURISDICTION

5 3. This Statement of Issues is brought before the Board under the authority of the
6 following laws. All section references are to the Business and Professions Code (the "Code")
7 unless otherwise indicated.

8 STATUTORY PROVISIONS

9 4. Business and Professions Code ("Code") section 480 states, in pertinent part:

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

12 (1) Been convicted of a crime. A conviction within the meaning of this section
13 means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
14 Any action that a board is permitted to take following the establishment of a
15 conviction may be taken when the time for appeal has elapsed, or the judgment of
16 conviction has been affirmed on appeal, or when an order granting probation is made
17 suspending the imposition of sentence, irrespective of a subsequent order under the
18 provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

16 (2) Done any act involving dishonesty, fraud, or deceit with the intent to
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.

21 (b) Notwithstanding any other provision of this code, a person shall not be
22 denied a license solely on the basis that he or she has been convicted of a felony if he
23 or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing
24 with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
25 convicted of a misdemeanor if he or she has met all applicable requirements of the
26 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
27 person when considering the denial of a license under subdivision (a) of Section 482.

25 (c) Notwithstanding any other provisions of this code, a person shall not be
26 denied a license solely on the basis of a conviction that has been dismissed pursuant
27 to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a
28 conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of
the Penal Code shall provide proof of the dismissal.

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5. Code section 492 states, in pertinent part:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest . . .

6. Code section 4202 states, in pertinent part:

(c) The board shall conduct a criminal background check of the applicant to determine if an applicant has committed acts that would constitute grounds for denial of licensure, pursuant to this chapter or Chapter 2 (commencing with Section 480) of Division 1.5.

(d) The board may suspend or revoke a license issued pursuant to this section on any ground specified in Section 4301 . . .

7. Code section 4300(c) states, in pertinent part:

The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. . . .

8. Code section 4301 states, in pertinent part:

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.

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

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

9. Code section 4022 states, in pertinent part:

"Dangerous drug" . . . means any drug or device unsafe for self-use in humans or animals, and includes the following:

1 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
without prescription," "Rx only," or words of similar import.

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

4 10. Code section 4060 states, in pertinent part:

5 No person shall possess any controlled substance, except that furnished to a
6 person upon the prescription of a physician, dentist, podiatrist, optometrist,
7 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
8 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
9 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 . . .

10 **DRUG**

11 11. *Marijuana* is a Schedule I controlled substance as designated by Health and Safety
12 Code section 11054(d)(13).

13 **BACKGROUND FACTS**

14 12. On or about October 21, 2011, in a criminal proceeding entitled *People v. Tam Nancy*
15 *La, William La, Richard Minh La and David Charles La*, in Santa Clara County Superior Court,
16 Case Number CC959080, Respondent was convicted by plea of nolo contendere of violating
17 Penal Code section 32 (accessory to a felony), a misdemeanor. That same day in that same
18 matter, Respondent's parents were convicted of violating Health and Safety Code section 11358,
19 (planting, cultivation, harvesting and processing of marijuana). The circumstances of the crime
20 are that in or around September and October 2009, law enforcement observed Tam and William
21 La, along with their sons Richard and David La, entering and leaving three locations in Stockton
22 and Saratoga, California. A search of these premises on or about October 22, 2009, revealed
23 approximately 1,138 marijuana plants, 2 pounds of processed marijuana, and a large amount of
24 equipment being used in the cultivation of marijuana. Further, it was discovered that power was
25 being diverted from the P G & E system to one of the premises. Consequently, Respondent, his
26 brother David, and his parents, Tam Nancy La and William La, were arrested. When questioned
27 by law enforcement, Respondent admitted to cultivating marijuana at all three locations for over
28 one and one-half years.

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 (Acts that Would Lead to Discipline of a Licentiate)

3 13. Paragraph 12 is above is fully incorporated herein. Respondent's application is subject
4 to denial under Code section 480(a)(3)(A), as follows:

5 a. **Code section 4301(j)**: Respondent violated Health and Safety Code section 11358, in
6 that for approximately one and one-half years, from a time uncertain in 2008 until October 2009,
7 he cultivated marijuana.

8 b. **Code section 4301(j)**: Respondent violated Code section 4060, in that in or around
9 October 2009 he unlawfully possessed marijuana, a controlled substance and a dangerous drug.

10 c. **Code section 4301(f)**: From a time uncertain in 2008 until October 2009, Respondent
11 engaged in acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, in that he
12 collaborated to unlawfully cultivate marijuana for sale.

13 d. **Code section 4301(l)**: Conviction of a crime, as set forth in Paragraph 12, above.
14

15 **SECOND CAUSE FOR DENIAL OF APPLICATION**

16 (Conviction of a Crime)

17 14. Respondent's application is subject to denial under Code sections 480(a)(1), and
18 4300(c), in conjunction with section 4301(l), in that Respondent was convicted of a crime that is
19 substantially related to the qualifications, functions, and duties of a licensee, as set forth in
20 Paragraph 12, above.¹

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27 ¹ On November 26, 2012, the court granted dismissal of the Penal Code section 32 charge
28 against Respondent pursuant to Penal Code section 1203.4.

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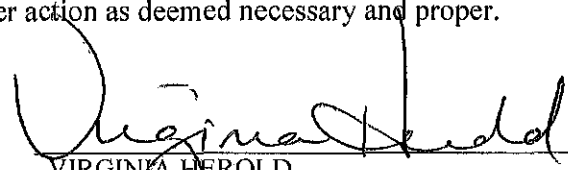
PRAYER

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 Richard Minh La for a Pharmacy Technician License;
2. Taking such other and further action as deemed necessary and proper.

DATED:

12/21/15



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

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