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

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

Case No. 6200

14 **JOHN VAN NGUYEN**

STATEMENT OF ISSUES

15 **Pharmacy Technician Registration**
16 **Applicant**

Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about June 27, 2016, the Board received an application for a Pharmacy
25 Technician Registration from John Van Nguyen (Respondent). On or about June 19, 2016, John
26 Van Nguyen certified under penalty of perjury to the truthfulness of all statements, answers, and
27 representations in the application. The Board denied the application on April 28, 2017.

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1 **JURISDICTION**

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

5 4. Section 4300, subdivision (c) of the Code states: "The board may refuse a license to
6 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 omitting
12 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 in
20 paragraphs (1) and (2) of subdivision (a).

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

24 6. Section 480 of the Code states:

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

27 (1) Been convicted of a crime. A conviction within the meaning of this section
28 means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any
action that a board is permitted to take following the establishment of a conviction may
be taken when the time for appeal has elapsed, or the judgment of 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 the provisions of Section
1203.4, 1203.4a, or 1203.41 of the Penal Code.

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

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

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

6 (b) Notwithstanding any other provision of this code, a person shall not be denied
7 a license solely on the basis that he or she has been convicted of a felony if he or she has
8 obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section
9 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a
10 misdemeanor if he or she has met all applicable requirements of the criteria of
11 rehabilitation developed by the board to evaluate the rehabilitation of a person when
12 considering the denial of a license under subdivision (a) of Section 482.

13 (c) Notwithstanding any other provisions of this code, a person shall not be denied
14 a license solely on the basis of a conviction that has been dismissed pursuant to Section
15 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that
16 has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code
17 shall provide proof of the dismissal.

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

21 7. Section 482 of the Code states:

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

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

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

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

28 8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board
within the department pursuant to law to deny an application for a license or to suspend
or revoke a license or otherwise take disciplinary action against a person who holds a
license, upon the ground that the applicant or the licensee has been convicted of a crime
substantially related to the qualifications, functions, and duties of the licensee in
question, the record of conviction of the crime shall be conclusive evidence of the fact
that the conviction occurred, but only of that fact, and the board may inquire into the
circumstances surrounding the commission of the crime in order to fix the degree of
discipline or to determine if the conviction is substantially related to the qualifications,
functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and
"registration."

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1 9. Section 4301 of the Code states:

2 The board shall take action against any holder of a license who is guilty of
3 unprofessional conduct or whose license has been issued by mistake. Unprofessional
4 conduct shall include, but is not limited to, any of the following:

5 (h) The administering to oneself, of any controlled substance, or the use of any
6 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous
7 or injurious to oneself, to a person holding a license under this chapter, or to any other
8 person or to the public, or to the extent that the use impairs the ability of the person to
9 conduct with safety to the public the practice authorized by the license.

10 (i) The conviction of a crime substantially related to the qualifications, functions,
11 and duties of a licensee under this chapter. The record of conviction of a violation of
12 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
13 regulating controlled substances or of a violation of the statutes of this state regulating
14 controlled substances or dangerous drugs shall be conclusive evidence of unprofessional
15 conduct. In all other cases, the record of conviction shall be conclusive evidence only of
16 the fact that the conviction occurred. The board may inquire into the circumstances
17 surrounding the commission of the crime, in order to fix the degree of discipline or, in
18 the case of a conviction not involving controlled substances or dangerous drugs, to
19 determine if the conviction is of an offense substantially related to the qualifications,
20 functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a
21 conviction following a plea of nolo contendere is deemed to be a conviction within the
22 meaning of this provision. The board may take action when the time for appeal has
23 elapsed, or the judgment of conviction has been affirmed on appeal or when an order
24 granting probation is made suspending the imposition of sentence, irrespective of a
25 subsequent order under Section 1203.4 of the Penal Code allowing the person to
26 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the
27 verdict of guilty, or dismissing the accusation, information, or indictment. . .

28 REGULATORY PROVISIONS

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

21 (a) When considering the denial of a facility or personal license under Section 480
22 of the Business and Professions Code, the board, in evaluating the rehabilitation of the
23 applicant and his present eligibility for licensing or registration, will consider the
24 following criteria:

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

27 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under
28 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).

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

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

4 11. California Code of Regulations, title 16, section 1770 states:

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

12 **FIRST CAUSE FOR DENIAL OF APPLICATION**

13 **(August 22, 2003 Criminal Convictions for Second Degree Burglary &**
14 **Taking a Vehicle without the Owner's Consent on June 10, 2003)**

15 12. Respondent's application for registration as a pharmacy technician is subject to denial
16 under section 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that he was convicted of
17 crimes that are substantially related to the qualifications, duties, and functions of a pharmacy
18 technician, and would be grounds for discipline under section 4301(l) of the Code for a registered
19 pharmacy technician. The circumstances are as follows:

20 a. On or about August 22, 2003, in a criminal proceeding entitled *People of the*
21 *State of California vs. John Van Nguyen*, in Orange County Superior Court, case number
22 03HF0876, Respondent was convicted on his plea of guilty of violating two counts of Penal Code
23 section 459/460, second degree burglary; and Vehicle Code section 10851(a), taking a vehicle
24 without the owner's consent, felonies reduced to misdemeanors under Penal Code section 17(b).

25 b. As a result of the convictions, Respondent was granted informal probation for
26 three years, and sentenced to serve 90 days in the Orange County Jail, with pre-custody credit for
27 two days. Respondent was ordered to pay fees, fines, and victim restitution. At a hearing on
28 September 24, 2008, the court denied Respondent's petition for relief.

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SECOND CAUSE FOR DENIAL OF APPLICATION

(March 28, 2007 Criminal Conviction for DUI on November 26, 2006)

13. Respondent's application for registration as a pharmacy technician is subject to denial under section 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician, and would be grounds for discipline under section 4301(l) of the Code for a registered pharmacy technician. The circumstances are as follows:

a. On or about March 28, 2007, in a criminal proceeding entitled *People of the State of California vs. John Van Nguyen*, in San Bernardino County Superior Court, case number TWV053683, Respondent was convicted on his plea of no contest of violating Vehicle Code section 23152(a), driving under the influence of alcohol and/or drugs, a misdemeanor.

b. As a result of the conviction, Respondent was granted conditional release for 36 months on terms that require he attend a three-month First Offender Alcohol Program, pay fees, fines, and restitution, and comply with DUI probation. At a hearing on August 1, 2007, Respondent's probation was revoked for failure to attend the alcohol program. Respondent's probation was reinstated on September 17, 2007. The court extended Respondent's probation twice in order to comply with its terms. Probation expired on May 13, 2012.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Dangerous Use of Alcohol)

14. Respondent's application for licensure is subject to denial under section 480(a)(3)(A) of the Code in that on or about November 26, 2006, he used alcohol in a manner that was dangerous and injurious to himself and to others, which would be a ground for discipline under section 4301(h) of the Code for a registered pharmacy technician.

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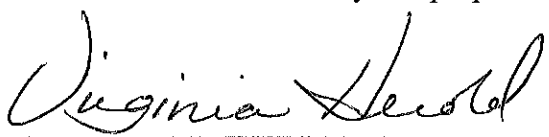
PRAYER

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 John Van Nguyen for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED:

10/7/17



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

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