

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

In the Matter of the Statement of  
Issues Against:

KHANH PHI NGUYEN

Pharmacy Technician Applicant

Respondent.

Case No. 3997

OAH No. 2011061275

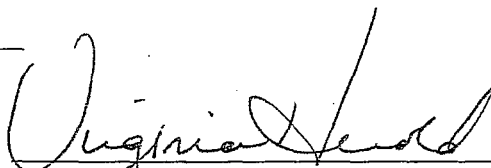
**WITHDRAWAL OF STATEMENT OF ISSUES**

On or about June 2, 2011, Complainant Virginia K. Herold ("Complainant"), in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Statement of Issues No. 3997 against Respondent Khanh Phi Nguyen.

On or about September 23, 2011, Complainant Virginia K. Herold ("Complainant"), in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed First Amended Statement of Issues No. 3997 against Respondent Khanh Phi Nguyen.

WHEREFORE, Respondent, on or about October 25, 2011, withdrew his Request for Appeal and Request for Hearing, Statement of Issues No. 3997, filed on or about June 2, 2011 and First Amended Statement of Issues No. 3997, filed on or about September 23, 2011, against Respondent is hereby withdrawn.

DATED: 11/10/11



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

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

12 In the Matter of the Statement of Issues  
Against:

Case No. 3997

13 **KHANH PHI NGUYEN**  
14 **16166 Mount Baden Powell Street**  
15 **Fountain Valley, CA 92708**

**FIRST AMENDED**  
**STATEMENT OF ISSUES**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about June 28, 2010, the Board of Pharmacy, Department of Consumer Affairs  
24 received an application for a Pharmacy Technician Registration from Khanh Phi Nguyen  
25 (Respondent). On or about June 22, 2010, Khanh Phi Nguyen certified under penalty of perjury  
26 to the truthfulness of all statements, answers, and representations in the application. The Board  
27 denied the application on November 22, 2010.

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7. Section 482 of the Code states:

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

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

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

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."

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.
- ....

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo

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contendere is deemed to be a conviction within the meaning of this provision. The board may take action 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 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. . . .

**REGULATORY PROVISIONS**

10. 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.

....

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.

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1 FIRST CAUSE FOR DENIAL OF APPLICATION

2 (July 20, 2009 Criminal Conviction for Issuance of Check

3 With Insufficient Funds on August 1, 2007)

4 12. Respondent's application for registration as a pharmacy technician is subject to denial  
5 under sections 480, subdivision (a)(1) of the Code in that Respondent was convicted of a crime  
6 that is substantially related to the qualifications, duties, and functions of a pharmacy technician.

7 The circumstances are as follows:

8 a. On or about July 20, 2009, in a criminal proceeding entitled *The State of*  
9 *Nevada vs. Khanh P. Nguyen*, in Clark County District Court, case number C256179, Respondent  
10 was convicted on his plea of guilty to two felony counts of violating Nevada Revised Statutes  
11 205.130, issuance of a check or draft without sufficient money or credit; and Nevada Revised  
12 Statutes 193.330, attempt to commit a felony.

13 b. As a result of the conviction, on or about October 22, 2009, Respondent was  
14 sentenced to serve six months in the Clark County Detention Center. The detention was  
15 suspended and Respondent was placed on informal probation, ordered to pay restitution in the  
16 amount of \$55,075.00, and ordered to comply with standard probation terms.

17 c. The circumstances that led to the conviction are that on or about August 1,  
18 2007, Respondent drew and knowingly passed a bad check, payable to Caesar's Palace Hotel and  
19 Casino in Las Vegas, in the amount of \$50,000. Respondent received cash and gaming chips in  
20 exchange for the check. The check was deposited and was returned to Caesar's Palace as unpaid.  
21 The casino mailed a certified letter to Respondent demanding payment. Respondent failed to  
22 respond to the demand, so the Clark County District Attorney's Office was notified and charges  
23 were filed. On June 9, 2009, Respondent was arrested and booked.

24 SECOND CAUSE FOR DENIAL OF APPLICATION

25 (Commission of a Dishonest Act)

26 13. Respondent's application for registration as a pharmacy technician is subject to denial  
27 under sections 480, subdivision (a)(2) of the Code for unprofessional conduct in that on or about

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1 August 1, 2007, Respondent committed an act of dishonesty, fraud and deceit with the intent to  
2 substantially benefit himself, as detailed in paragraph 12, above.

3 **THIRD CAUSE FOR DENIAL OF APPLICATION**

4 **(Commission of Acts Which if Done by a Licensee Would be**

5 **Grounds for Suspension or Revocation of License)**

6 14. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)  
7 of the Code in that he committed acts, that if done by a licensed pharmacy technician, would be  
8 grounds for suspension or revocation of the license. The circumstances are as follows:

9 a. On or about July 20, 2009, as detailed in paragraph 12, above, Respondent  
10 was convicted of a crime substantially related to the qualifications, functions, and duties of a  
11 licensed pharmacy technician, in violation of section 4301, subdivision (l) of the Code.

12 b. On or about August 1, 2007, as detailed in paragraph 12, above, Respondent  
13 committed an act involving moral turpitude, dishonesty, fraud, and deceit in violation of section  
14 4301, subdivision (f) of the Code.

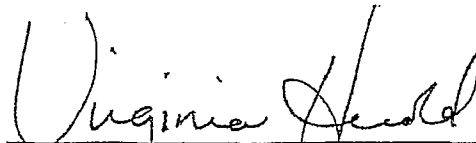
15 **PRAYER**

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

18 1. Denying the application of Khanh Phi Nguyen for a Pharmacy Technician  
19 Registration;

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

21  
22 DATED: 9/23/11



23 VIRGINIA HEROLD  
24 Executive Officer  
25 Board of Pharmacy  
26 Department of Consumer Affairs  
27 State of California  
28 *Complainant*

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