

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

In the Matter of the Statement of Issues  
Against:

RICHARD MINH LA,

Pharmacy Technician Registration  
Applicant

Respondent.

Case No. 5518

OAH No. 2016020831

**DECISION AND ORDER**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on October 28, 2016.

It is so ORDERED on September 28, 2016.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_

Amy Gutierrez, Pharm.D.  
Board President

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**PROPOSED DECISION**

This matter was heard before Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 1, 2016, in Sacramento, California.

Jeffrey Phillips, Deputy Attorney General, represented Virginia Herrold (complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Richard Minh La (respondent) represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on June 1, 2016.

**FACTUAL FINDINGS**

1. On December 30, 2014, the Board received a Pharmacy Technician Application from respondent.<sup>1</sup> Complainant seeks to deny respondent's application based upon his conviction and related conduct described below.

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<sup>1</sup> This is respondent's second application. On May 20, 2011, the Board received his initial application for a pharmacy technician license. On December 15, 2011, the Board denied respondent's application. Respondent appealed the denial and the Board filed a

### *Conviction and Related Conduct*

2. On August 24, 2011, in the Santa Clara County Superior Court, respondent, on a plea of nolo contendere, was convicted of violating Penal Code section 32 (accessory to a felony), a misdemeanor. Respondent was placed on one year of informal probation, was ordered to serve 10 days in jail, and to pay fines and fees.

3. Respondent successfully completed probation. On November 26, 2012, the Santa Clara County Superior Court granted respondent's petition pursuant to Penal Code section 1203.4, to withdraw his plea of nolo contendere, enter a plea of not guilty, and dismiss the charges under Penal Code section 32.

4. The circumstances underlying respondent's conviction are that during approximately nine to 18 months ending with the execution of search warrants in October, 2009, respondent, and his mother, father, and twin brother collaborated to cultivate and sell marijuana grown at their two residences in Saratoga and Stockton, and at a commercial location in Stockton. During the execution of search warrants in October, 2009, law enforcement seized approximately 283 marijuana plants and approximately two pounds of dried/bagged marijuana at the Saratoga residence, approximately 380 marijuana plants at the Stockton residence, and approximately 475 marijuana plants at the Stockton commercial building. Law enforcement found sophisticated cultivation equipment at each of the three locations.

### *Respondent's Evidence*

5. Respondent readily admitted at hearing that he is guilty of cultivating marijuana for sale. Respondent was accompanied at hearing by his mother and father. Respondent's father sat with respondent during the hearing and consulted with him.

6. Respondent's brother was the first in the family to start cultivating marijuana. After approximately nine months, respondent and his father also started cultivating marijuana when they saw how much money respondent's brother was making. Respondent's mother was in charge of finances and sales. Respondent explained that his family became involved in marijuana cultivation and sales because his parents lost their savings and mortgage brokerage business during the 2008 recession. Respondent's family harvested approximately one to two pounds of marijuana per month from each of the three locations. Respondent acknowledged at hearing that knew his conduct was illegal.

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Statement of Issues. On September 15, 2012, respondent withdrew his request for a hearing, and the board withdrew the Statement of Issues.

7. Respondent has a bachelor's of science degree from U.C. Davis, where he majored in microbiology, with a minor in plant biology. Respondent utilized his education in plant biology to cultivate marijuana.

8. Respondent is now 33 years of age. Respondent testified he has learned from his conviction, and will never again break the law. Respondent's goal is to become a pharmacist. He has applied to pharmacy school and is awaiting a reply on his application. Respondent is committed to his goal of becoming a pharmacist in substantial part because of family tradition dating back to 1947, when his grandfather opened a pharmacy in Saigon, and later pioneered the importation of pharmaceuticals from the United States.

9. Respondent is now working as a pharmacy clerk with Walgreens. Respondent submitted letters of support from his manager and a colleague, both of whom respondent has impressed with his dedication and professionalism. Both are aware of respondent's criminal conviction. Respondent's colleague, Amanda Byrd, wrote a letter and testified on respondent's behalf. Respondent and Ms. Byrd have worked together for two and a half years and been in a dating relationship for the past two years. Due to their personal relationship, Ms. Byrd's testimony is given less weight than if their relationship were solely professional. (Evid. Code, § 780, subd. (f).)

10. Respondent submitted a letter from an abbot at the Buddhist temple in Stockton. The abbot knew of respondent's criminal conviction, and attested to respondent's motivation to become a pharmacist and productive law abiding citizen. Respondent volunteers to help with temple maintenance, and serves meals at St. Mary's dining hall.

#### *Discussion*

11. The California Code of Regulations sets forth criteria for evaluating the rehabilitation of a license applicant.<sup>2</sup> Respondent and his family were engaged in a

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<sup>2</sup> California Code of Regulations, title 16, section 1769, subdivision (a), provides as follows:

- (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).

sophisticated enterprise to cultivate, harvest, and sell substantial amounts of marijuana over an extended period of time. This is a serious offense. Respondent has, however, demonstrated substantial rehabilitation. He is a high performing employee at Walgreens, is committed to advancing himself in the pharmacy profession, and actively volunteers in his community. Significantly, the Santa Clara County Superior Court granted respondent relief pursuant to Penal Code section 1203.4, dismissing the misdemeanor conviction. (Factual Finding 3.) When all the evidence is considered in light of the criteria set forth in California Code of Regulations, respondent has shown that it would not be inconsistent with the public interest to issue respondent a pharmacy technician license, with appropriate terms and conditions of probation to ensure protection of the public safety.

### LEGAL CONCLUSIONS

1. The burden of proof is on the applicant for a license. (*Martin v. Alcoholic Beverage Control Appeals Bd.* (1959) 52 Cal.2d 238.) Rehabilitation is akin to an affirmative defense; therefore, the burden of proof of establishing an affirmative defense of rehabilitation is on the proponent of that defense. (*Whetstone v. Board of Dental Examiners* (1927) 87 Cal.App. 156, 164.) The term "burden of proof" means "the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court." (Evid. Code, § 115.)

2. Pursuant to Business and Professions Code section 480, subdivisions (a)(1) and (a)(3)(A), the Board may deny a license on the grounds that the applicant has (1) been convicted of a crime, or (2) "done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license."

3. Under Business and Professions Code section 480, subdivision (a)(3)(B), the Board may deny a license "only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made."

4. Pursuant to California Code of Regulations, title 16, section 1770, a crime or act, as defined in section 480, shall be considered to be substantially related to the qualifications, functions, or duties of a licensee or registrant "if to a substantial degree it evidences present or potential unfitness ... to perform the functions authorized by [the] license or registration in a manner consistent with the public health, safety, and welfare."

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(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.

5. Pursuant to Business and Professions Code section 480, subdivision (c), “a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4 ... of the Penal Code.”

6. Business and Professions Code section 4300, subdivision (c), states: [t]he 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....”

7. Business and Professions Code section 4301, subdivisions (f), (j), and (l), provide that the Board may take disciplinary action when a licensee is guilty of unprofessional conduct, which includes, but is not limited to the “commission of any act involving moral turpitude, dishonesty, fraud, deceit or corruption,” “violation of any of the statutes of this state ... regulating controlled substances and dangerous drugs,” and “conviction of a crime substantially related to the qualifications, functions, and duties of a licensee.”

8. Health and Safety Code section 11054, subdivision (d)(13), provides that marijuana is a Schedule I controlled substance.

9. Business and Professions Code section 4060, states: “[n]o person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian ... or furnished pursuant to a drug order ....”

10. Health and Safety Code section 11358, states: “[e]very person who plants, cultivates, harvests, dries, or processes any marijuana or any part thereof, except as provided by law, shall be punished by imprisonment ....”

11. Penal Code section 32, states “[e]very person who, after a felony has been committed, harbors, conceals or aids a principal in such a felony, with the intent that said principal may avoid or escape from arrest, trial, conviction or punishment, having knowledge that such principal has committed such felony ... is an accessory to such felony.”

#### *Legal Causes for Denial of License*

12. Respondent was convicted of a misdemeanor violation of Penal Code section 32, acting as an accessory to a felony. (Factual Finding 2.) The conviction was dismissed pursuant to Penal Code section 1203.4. (Factual Finding 3.) Because of the dismissal pursuant to Penal Code section 1203.4, in conjunction with the restrictive provisions of Business and Professions Code section 480, subdivision (c), the conviction standing alone does not establish cause for denial of respondent’s application for licensure pursuant to Business and Professions Code sections 480, subdivision (a)(1), or 4301, subdivision (l).

13. Respondent, by his own admission, cultivated and possessed marijuana, in collaboration with his mother, father, and brother. (Factual Findings 5 through 7.) In doing so, respondent violated California statutes regulating controlled substances and dangerous drugs, including, but not limited to, Business and Professions Code section 4060, and Health and Safety Code section 11358.

14. Respondent's conduct evidences his present or potential unfitness to perform the functions authorized by a pharmacy technician license in a manner consistent with the public health, safety, and welfare. (Factual Findings 2 through 7.) Accordingly, respondent's conduct is determined to be substantially related to the qualifications, functions or duties of such a license.

15. Cause exists to deny respondent's application for licensure pursuant to Business and Professions Code section 480, subdivision (a)(3)(A), in that respondent's conduct would constitute grounds for license discipline under Business and Professions Code section 4301, subdivisions (f) and (j).

16. As set forth in Factual Findings 5 through 11, respondent has demonstrated substantial rehabilitation such that it would not be inconsistent with the public health, safety, and welfare to grant him a pharmacy technician license, with appropriate terms and conditions of probation.

## ORDER

Upon satisfaction of all statutory and regulatory requirements for issuance of a pharmacy technician license, a license shall be issued to respondent and immediately revoked; the order of revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

### **1. Certification Prior to Resuming Work**

Respondent shall be automatically suspended from working as a pharmacy technician until he is certified as defined by Business and Professions Code section 4202(a)(4) and provides satisfactory proof of certification to the Board. Respondent shall not resume working as a pharmacy technician until notified by the Board. Failure to achieve certification within one (1) year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the Board.

During suspension, respondent shall not enter any pharmacy area or any portion of any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall

not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the Board in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

## **2. Obey All Laws**

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- a conviction of any crime; or discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

## **3. Report to the Board**

Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.



#### **4. Interview with the Board**

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear at two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

#### **5. Cooperate with Board Staff**

Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

#### **6. Notice to Employers**

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 5518, and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 5518 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 5518 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 5518 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the Board shall be considered a violation of probation.

“Employment” within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is considered an employee, independent contractor or volunteer.

#### **7. Probation Monitoring Costs**

Respondent shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

#### **8. Status of License**

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent’s pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent’s license shall be subject to all terms and conditions of this probation not previously satisfied.

#### **9. License Surrender While on Probation/Suspension**

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his pharmacy technician license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent’s license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish his pharmacy technician license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three (3) years from the effective date of the surrender. Respondent shall

meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

**10. Notification of a Change in Name, Residence Address, Mailing Address or Employment**

Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number.

Failure to timely notify the board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

**11. Tolling of Probation**

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of forty (40) hours per calendar month. ~~Any month during which this minimum is not met shall toll the period of~~ probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of forty (40) hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of work" means calendar month during which respondent is not working for at least forty (40) hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least forty (40) hours as a pharmacy technician as defined by Business and Professions Code section 4115.

**12. Violation of Probation**

If a respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall automatically be

extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

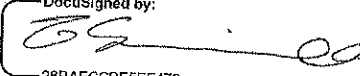
### **13. Completion of Probation**

Upon written notice by the Board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

### **14. No Ownership of Licensed Premises**

Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the Board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the Board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

DATED: June 28, 2016

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TIMOTHY J. ASPINWALL  
Administrative Law Judge  
Office of Administrative Hearings

1 KAMALA D. HARRIS  
Attorney General of California  
2 JANICE K. LACHMAN  
Supervising Deputy Attorney General  
3 JEFFREY M. PHILLIPS  
Deputy Attorney General  
4 State Bar No. 154990  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 324-6292  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **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.<sup>1</sup>

21 //

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27 <sup>1</sup> 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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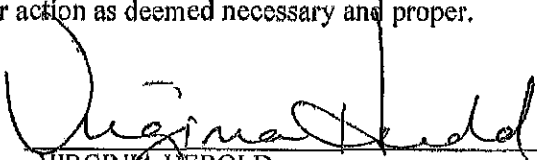
PRAYER

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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