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

In the Matter of the Statement of Issues Against: THI TRUONG KIEN Pharmacy Technician Registration <div style="text-align: right;">Respondent.</div>	Case No. 6529 OAH No. 2019020679 DEFAULT DECISION AND ORDER [Gov. Code, § 11520]
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FINDINGS OF FACT

1. On or about February 6, 2019, Complainant Anne Sodergren, in her official capacity as the Interim Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed First Amended Statement of Issues No. 6529 against Thi Truong Kien (“Respondent”) before the Board of Pharmacy.
2. On or about March 21, 2018, Respondent filed an application dated March 20, 2018, with the Board of Pharmacy to obtain a Pharmacy Technician Registration.
3. On or about August 14, 2018, the Board issued a letter denying Respondent's application for a Pharmacy Technician Registration. On or about August 24, 2018, Respondent appealed the Board's denial of his application and requested a hearing.
4. On or about February 11, 2019, Pauline Cisneros, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the First Amended Statement of Issues No. 6529, Supplemental Statement to Respondent, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address on the application form, which

1 was and is 11713 Everston Street, Norwalk, CA 90650. A copy of the First Amended Statement
2 of Issues is attached as exhibit A and is incorporated herein by reference.

3 5. Service of the Statement of Issues was effective as a matter of law under the provisions
4 of Government Code section 11505, subdivision (c).

5 6. A Notice of Hearing was served by mail at Respondent's address on the application
6 and it informed him that an administrative hearing in this matter was scheduled for May 28, 2019.

7 7. The matter was called for hearing at the date, time and location set forth in the Notice
8 of Hearing. The assigned Administrative Law Judge found that the service of the Notice of
9 Hearing on Respondent was proper. There was no appearance by or on behalf of Respondent. A
10 default was declared and on motion of counsel for Complainant, the matter was remanded to the
11 Board under Government Code section 11520. A copy of Office of Administrative Hearings
12 Findings and Declaration of Default; Order of Remand is attached as exhibit B and is incorporated
13 herein by reference.

14 8. Government Code section 11506, subdivision (c) states, in pertinent part:

15 (c) The respondent shall be entitled to a hearing on the merits if the
16 respondent files a notice of defense . . . and the notice shall be deemed a
17 specific denial of all parts of the accusation . . . not expressly admitted.
18 Failure to file a notice of defense . . . shall constitute a waiver of
19 respondent's right to a hearing, but the agency in its discretion may
20 nevertheless grant a hearing.

19 9. California Government Code section 11520, subdivision (a) states, in pertinent part:

20 (a) If the respondent either fails to file a notice of defense . . . or to appear
21 at the hearing, the agency may take action based upon the respondent's
22 express admissions or upon other evidence and affidavits may be used as
23 evidence without any notice to respondent

22 10. Pursuant to its authority under Government Code section 11520, the Board finds
23 Respondent is in default. The Board will take action without further hearing based upon the
24 allegation set forth in the First Amended Statement of Issues and Respondent's failure to establish
25 entitlement to issuance of a license.

26 **DETERMINATION OF ISSUES**

27 1. Based on the foregoing findings of fact, Respondent Thi Truong Kien has subjected
28 his application for a Pharmacy Technician Registration to denial.

Exhibit A

First Amended Statement of Issues No. 6529

(THI TRUONG KIEN)

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7 *Attorneys for Complainant*

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

12
13 In the Matter of the Statement of Issues
Against:
14 **THI TRUONG KIEN**
15 Pharmacy Technician Registration Applicant
16 Respondent.
17

Case No. 6529
FIRST AMENDED
STATEMENT OF ISSUES

18
19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about March 21, 2018, the Board received an application for a Pharmacy
25 Technician Registration from Thi Truong Kien (Respondent). On or about March 20, 2018,
26 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and
27 representations in the application. The Board denied the application on August 14, 2018.

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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 unless otherwise
4 indicated.

5 STATUTORY PROVISIONS

6 4. Section 480 states, in pertinent part:

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

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

15

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

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

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

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1 “(c) Notwithstanding any other provisions of this code, a person shall not be denied a
2 license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4,
3 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been
4 dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof
5 of the dismissal.

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

9 5. Section 490 provides, in pertinent part, that a board may suspend or revoke a license
10 on the ground that the licensee has been convicted of a crime substantially related to the
11 qualifications, functions, or duties of the business or profession for which the license was issued.

12 6. Section 4301 states, in pertinent part:

13 “The board shall take action against any holder of a license who is guilty of unprofessional
14 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
15 Unprofessional conduct shall include, but is not limited to, any of the following:

16

17 “(l) The conviction of a crime substantially related to the qualifications, functions, and
18 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
19 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
20 substances or of a violation of the statutes of this state regulating controlled substances or
21 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
22 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
23 The board may inquire into the circumstances surrounding the commission of the crime, in order
24 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
25 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
26 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
27 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
28 of this provision. The board may take action when the time for appeal has elapsed, or the

1 judgment of conviction has been affirmed on appeal or when an order granting probation is made
2 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
3 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
4 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
5 indictment.

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

11 "(p) Actions or conduct that would have warranted denial of a license."

12 **REGULATORY PROVISIONS**

13 7. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

20 **FIRST CAUSE FOR DENIAL OF APPLICATION**

21 **(Convictions of Substantially Related Crimes)**

22 8. Respondent's application is subject to denial under section 480, subdivision (a)(1), in
23 that Respondent was convicted of substantially related crimes, as follows:

24 a. On or about December 12, 2012, after pleading guilty, Respondent was convicted of
25 one misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving under
26 the influence of alcohol or drugs] in the criminal proceeding entitled *The People of the State of*
27 *California v. Thi T. Kien* (Super. Ct. Orange County, 2012, No. 12WM09906). The court

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1 sentenced Respondent to serve 90 days in jail and placed him on 5 years' probation, with terms
2 and conditions.

3 b. On or about June 7, 2011, after pleading nolo contendere, Respondent was convicted
4 of one misdemeanor count of violating Vehicle Code section 23103 [reckless driving] in the
5 criminal proceeding entitled *The People of the State of California v. Thi Truong Kien* (Super. Ct.
6 L.A. County, 2011, No. 1BF00924). The court ordered Respondent to enroll in a 3-month first
7 offender DUI program and placed him on 36 months' probation, with terms and conditions.

8 c. On or about March 8, 2010, after pleading nolo contendere, Respondent was
9 convicted of one misdemeanor count of violating Vehicle Code section 12500, subdivision (a)
10 [driving without a license] in the criminal proceeding entitled *The People of the State of*
11 *California v. Thi Truong Kien* (Super. Ct. L.A. County, 2010, No. 8BF06433). The court placed
12 Respondent on 12 months' probation, with terms and conditions.

13 **SECOND CAUSE FOR DENIAL OF APPLICATION**

14 **(Knowingly Made a False Statement of Fact)**

15 9. Respondent's application is subject to denial under section 480, subdivision (d), in
16 that on or about March 20, 2018, Respondent knowingly made a false statement of fact required
17 to be revealed in his application when he failed to disclose his convictions. Complainant refers
18 to, and by this reference incorporates, the allegations set forth in paragraph 8, as though set forth
19 fully.

20 **THIRD CAUSE FOR DENIAL OF APPLICATION**

21 **(Acts Warranting Denial of Licensure)**

22 10. Respondent's application is subject to denial under sections 4301, subdivision (p) and
23 480, subdivisions (a)(3)(A) and (a)(3)(B), in that Respondent committed acts which if done by a
24 licentiate of the business and profession, would be grounds for suspension or revocation of his
25 license in that Respondent was convicted of crimes substantially related to the qualifications,
26 functions, or duties of a pharmacy technician which to a substantial degree evidence his present
27 or potential unfitness to perform the functions authorized by his license in a manner consistent
28 with the public health, safety, or welfare, in violation of sections 4031, subdivision (l), and 490,

1 in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,
2 and by this reference incorporates, the allegations set forth above in paragraph 8, as though set
3 forth fully.

4 **PRAYER**

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
6 and that following the hearing, the Board issue a decision:

- 7 1. Denying the application of Thi Truong Kien for a Pharmacy Technician Registration;
8 and
9 2. Taking such other and further action as deemed necessary and proper.

10
11 DATED: February 6, 2019



12 ANNE SODERGREN
13 Interim Executive Officer
14 Board of Pharmacy
15 Department of Consumer Affairs
16 State of California
17 *Complainant*

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