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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. 3196

12 CHRISTOPHER DANIEL ZEPEDA  
13 FERNANDEZ  
14 14601 Madris Avenue  
Norwalk, CA 90650

**STATEMENT OF ISSUES**

15 Pharmacy Technician Applicant

16 Respondent.

17

18 Complainant alleges:

19

**PARTIES**

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

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2. On or about July 17, 2007, the Board of Pharmacy, Department of  
24 Consumer Affairs received an application for a Pharmacy Technician License from Christopher  
25 Daniel Zepeda Fernandez (Respondent). On or about July 12, 2007, Christopher Daniel Zepeda  
26 Fernandez certified under penalty of perjury to the truthfulness of all statements, answers, and  
27 representations in the application. The Board denied the application on February 26, 2008.

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**JURISDICTION**

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

**STATUTORY PROVISIONS**

4. Section 475 states:

“(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

“(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

“(2) Conviction of a crime.

“(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

“(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

“(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

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

5. Section 477 of the Code states:

As used in this division:

“(a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency.”

“(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.”

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1           6.       Section 480 states, in pertinent part:

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

4                               "(1) Been convicted of a crime. A conviction within the meaning of this  
5 section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

6 Any action which a board is permitted to take following the establishment of a conviction may  
7 be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed  
8 on appeal, or when an order granting probation is made suspending the imposition of sentence,  
9 irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

10                               "(2) Done any act involving dishonesty, fraud or deceit with the intent to  
11 substantially benefit himself or another, or substantially injure another; or

12                               "(3) Done any act which if done by a licentiate of the business or  
13 profession in question, would be grounds for suspension or revocation of license.

14                               "The board may deny a license pursuant to this subdivision only if the crime or  
15 act is substantially related to the qualifications, functions or duties of the business or profession  
16 for which application is made.

17                               .....

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

21           7.       Section 493 states:

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

1 in order to fix the degree of discipline or to determine if the conviction is substantially related to  
2 the qualifications, functions, and duties of the licensee in question.

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

5 8. Section 4021 states:

6 "Controlled substance' means any substance listed in Chapter 2 (commencing  
7 with Section 11053) of Division 10 of the Health and Safety Code."

8 9. Section 4022 states:

9 "Dangerous drug' or 'dangerous device' means any drug or device unsafe for  
10 self-use, except veterinary drugs that are labeled as such, and includes the following:

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

13 . . . .

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

16 10. Section 4060 states:

17 "No person shall possess any controlled substance, except that furnished to a  
18 person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or  
19 naturopathic doctor pursuant to Section 3640.7 . . . ."

20 11. Section 4300, subdivision (c), states, in pertinent part:

21 "(c) The board may refuse a license to any applicant guilty of unprofessional  
22 conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a  
23 license who is guilty of unprofessional conduct and who has met all other requirements for  
24 licensure. The board may issue the license subject to any terms or conditions not contrary to  
25 public policy, including, but not limited to, the following:

26 "(1) Medical or psychiatric evaluation.

27 "(2) Continuing medical or psychiatric treatment.

28 "(3) Restriction of type or circumstances of practice.

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“(4) Continuing participation in a board-approved rehabilitation program.

“(5) Abstention from the use of alcohol or drugs.

“(6) Random fluid testing for alcohol or drugs.

“(7) Compliance with laws and regulations governing the practice of pharmacy.”

12. 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.

....

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

....

“(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.

“(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.

1 The board may inquire into the circumstances surrounding the commission of the crime, in order  
2 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
3 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
4 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty  
5 or a conviction following a plea of nolo contendere is deemed to be a conviction within the  
6 meaning of this provision. The board may take action when the time for appeal has elapsed, or  
7 the judgment of conviction has been affirmed on appeal or when an order granting probation is  
8 made suspending the imposition of sentence, irrespective of a subsequent order under Section  
9 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a  
10 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,  
11 or indictment.”

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

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“(q) Engaging in any conduct that subverts or attempts to subvert an investigation  
of the board.”

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#### **REGULATORY PROVISIONS**

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

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“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  
20 duties of a licensee or registrant if to a substantial degree it evidences present or potential  
21 unfitness of a licensee or registrant to perform the functions authorized by his license or  
22 registration in a manner consistent with the public health, safety, or welfare.”

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14. Health and Safety Code section 11357, in pertinent part, makes it unlawful  
for any person to possess **Vicodin**, or concentrated cannabis.

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1 him. The officers found illegal prescriptions and pills in three separate containers in  
2 Respondent's back pack. Respondent was taken into custody and transported to the Police  
3 Department after admitting that he did not possess a valid prescription for Vicodin or any of the  
4 pills in his possession, including tramadol hcl, and clonazepam.

5 **SECOND CAUSE FOR DENIAL OF APPLICATION**

6 **(Conviction of a Crime Involving Dangerous Drug(s))**

7 19. Respondent's application is subject to denial under Code section 480(a)(3)  
8 by reference to Code section 4300(c) by reference to 4021; 4022; 4060; in that, as described in  
9 paragraph 18, subparagraphs (a) and (b), Respondent was convicted of a misdemeanor involving  
10 the possession of a controlled substance without a prescription. Complainant refers to, and by  
11 this reference incorporates the allegations set forth above in paragraph 18, subparagraphs (a) and  
12 (b), inclusive, as though set forth fully.

13 **THIRD CAUSE FOR DENIAL OF APPLICATION**

14 **(Violation(s) of Law(s) Regulating Controlled Substances/Dangerous Drugs)**

15 20. Respondent's application is subject to denial under Code section 480(a)(3)  
16 and section 4300(c) by reference to 4301(j) in that, as described in paragraph 18, subparagraphs  
17 (a) and (b), above, Respondent violated the laws regulating controlled substances. Complainant  
18 refers to, and by this reference incorporates the allegations set forth above in paragraph 18,  
19 subparagraphs (a) and (b), inclusive, as though set forth fully.

20 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

21 **(Unprofessional Conduct)**

22 21. Respondent is subject to disciplinary action pursuant to Sections 4300(c),  
23 and 4301(h), in that on or about October 21, 2006, Respondent committed acts of unprofessional  
24 conduct by possessing illegal drugs without a prescription. Complainant refers to, and by this  
25 reference incorporates the allegations set forth above in paragraph 18, subparagraphs (a) and (b),  
26 inclusive, as though set forth fully.

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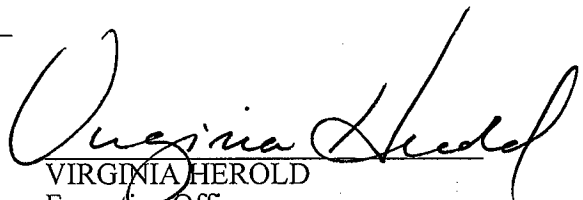
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PRAYER

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

DATED: 4/14/09



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

DOJ Matter ID: LA2008601191-SOI  
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