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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: **NICHOLAS BRANDON TORRES** 10348 25th Street Rancho Cucamonga, CA 91730 Pharmacy Technician Registration Application Respondent.	Case No. 3446 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

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

2. On or about September 21, 2007, the Board received an Application for Registration as a Pharmacy Technician from Nicholas Brandon Torres (Respondent). On or about July 18, 2007, and November 5, 2007, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on March 25, 2009.

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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 unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 480 states, in pertinent part:

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

"(1) Been convicted of a crime. A conviction within the meaning of this section 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 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.

"(3)

"(A) 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.

"(B) The board may deny a license pursuant to this subdivision 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.

. . . .

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

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5. Section 4300, subdivision (c), states, in pertinent part, that "[t]he board may refuse a license to any applicant guilty of unprofessional conduct. . . ."

6. 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.

"(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

. . . .

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee . . . 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. . . ."

REGULATORY PROVISIONS

7. 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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FIRST CAUSE FOR DENIAL OF APPLICATION

(Convictions of Substantially Related Crimes)

8. Respondent's application is subject to denial under sections 480, subdivisions (a)(1), (3)(A) and (3)(B), 4300 and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of crimes substantially related to the qualifications, functions or duties of a registered pharmacy technician, as follows:

a. On or about December 17, 2008, after pleading guilty, Respondent was convicted of one misdemeanor count of violating Penal Code section 470(d) [intent to defraud] in the criminal proceeding entitled *The People of the State of California v. Nicholas Brandon Torres* (Super. Ct. Monterey County, 2008, No. SS082402A). The Court sentenced Respondent to 20 days in jail, and placed him on three (3) years probation. The circumstances underlying the conviction are that on or about August 7, 2008, at Wells Fargo Bank, Respondent attempted to cash an altered check issued by Cable Ad Ventures. The payee name on the check was erased and replaced with Respondent's name.

b. On or about August 14, 2007, after pleading guilty, Respondent was convicted of one misdemeanor count of violating Penal Code section 12021(c)(1) [convicted person possessing a firearm] in the criminal proceeding entitled *The People of the State of California v. Nicholas Brandon Torres* (Super. Ct. San Bernardino County, 2007, No. FWV700123). The Court sentenced Respondent to 180 days in jail, and ordered him to pay $130 to the Victim Restitution Fund[1]. The circumstances underlying the conviction are that on or about February 9, 2007, Respondent possessed a .12 gauge Browning pump action shotgun with five .12 gauge shotgun slugs, and admitted to having a prior misdemeanor battery conviction under Penal Code section 242.

c. On or about November 28, 2000, after pleading nolo contendere, Respondent was convicted of two misdemeanor counts of violating Penal Code sections 242 [battery] and 647(a)

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[1] On or about June 29, 2009, the Court issued a warrant for Respondent's arrest for violation of probation condition number 2, failure to pay $130 to the Victim Restitution Fund. The warrant is outstanding.

[disorderly conduct] in the criminal proceeding entitled *The People of the State of California v. Nicholas Brandon Torres* (Super. Ct. Monterey County, 2000, No. MS184129A). The Court sentenced Respondent to 90 days in jail, and placed him on 36 months probation. The circumstances underlying the conviction are that on or about July 20, 2000, Respondent attended the Rodeo in Salinas, California. While walking around, Respondent grabbed and groped, alternately, two teenage girls, ages 13 and 16.

d. On or about July 21, 2000, after pleading guilty, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 12500(a) [driving without a valid license] in the criminal proceeding entitled *The People of the State of California v. Nicholas Brandon Torres* (Super. Ct. Monterey County, 2000, No. MS178016A). The Court placed Respondent on three (3) years probation, and ordered him to pay fines. The circumstances underlying the conviction are that on or about July 15, 2000, Respondent drove a vehicle when his driver's license was suspended or revoked.

e. On or about April 12, 2000, after pleading guilty, Respondent was convicted of one misdemeanor count of violating Penal Code section 459 [burglary] in the criminal proceeding entitled *The People of the State of California v. Nicholas Brandon Torres* (Super. Ct. Monterey County, 2000, No. MS179815). The Court sentenced Respondent to 25 days in jail, and placed him on 36 months probation. The circumstances underlying the conviction are that on or about Wednesday, March 15, 2000, 12:30 pm, Respondent, a student, was the subject of a probation search at North Salinas High School. Respondent possessed three (3) stolen credit cards. Respondent admitted to using at least one of the cards.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Dishonesty in Application Documents)

9. Respondent's application is subject to denial under sections 480, subdivision (c), 4300 and 4301, subdivision (g), in that Respondent knowingly made false statements, and/or, knowingly omitted material facts, which were required to be revealed in Respondent's Application for Registration as a Pharmacy Technician as follows:

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a. On or about July 18, 2007, and November 5, 2007, Respondent signed his Application for Registration as a Pharmacy Technician and included an affidavit, certifying under penalty of perjury to the truth and accuracy of all statements, answers, and representations therein. Respondent answered "Yes" to Question 6 of the application, and failed to provide the Board with any explanation for his affirmative answer. Question 6 asks:

> Have you ever been convicted of or pled no contest to a violation of any law of a foreign country, the United States or any state laws or local ordinances? You must include all misdemeanor and felony convictions, regardless of the age of the conviction, including those which have been set aside under Penal Code section 1203.4. Traffic violations of $500 or less need not be reported. **If "yes," attach an explanation including the type of violation, the date, circumstances, location and the complete penalty received.** In addition to this written explanation, please provide the Board of Pharmacy with **certified copies of all pertinent court documents or arrest reports relating to this conviction.**

b. On or about November 5, 2007, in reply to the Board's request for substantiating documentation for his answer to Question 6, Respondent provided written explanations for only two (2) convictions, which are more fully discussed in paragraph 8, subparagraphs (b) and (c), above.

c. Respondent failed to disclose and provide information related to two convictions, which are more fully discussed in paragraph 8, subparagraphs, (d) and (e), and are herein incorporated by reference as set forth in whole[2].

THIRD CAUSE FOR DENIAL OF APPLICATION

(Acts of Dishonesty and Moral Turpitude)

10. Respondent's application is subject to denial under sections 480, subdivision (a)(2), 4300 and 4301, subdivisions (f), on the grounds of unprofessional conduct, in that Respondent committed acts of dishonesty, and/or, moral turpitude, as more fully discussed in paragraphs 8 and 9, above, which are herein incorporated by reference as set forth in whole.

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[2] At the time of his Application for Registration as a Pharmacy Technician, Respondent's conviction discussed in paragraph 8, subparagraph (a), was not yet final, and thus could not be disclosed.

PRAYER

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

1. Denying Respondent Nicholas Brandon Torres' application for Pharmacy Technician Registration;

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

DATED: 7/19/10

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

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