1 EDMUND G. BROWN JR.
   Attorney General of California
2 LINDA K. SCHNEIDER
   Supervising Deputy Attorney General
3 SHERRY L. LEDAKIS
   Deputy Attorney General
4 State Bar No. 131767
     110 West "A" Street, Suite 1100
5   San Diego, CA 92101
     P.O. Box 85266
6   San Diego, CA 92186-5266
     Telephone: (619) 645-2078
7   Facsimile: (619) 645-2061
   Attorneys for Complainant

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

11

In the Matter of the Statement of Issues Against:	Case No. SI 2009 3448
REGINA TOVAR LEWZADER **1762 Bern Dr.** **Corona, CA 92882**	**STATEMENT OF ISSUES**
Respondent.	

17   Complainant alleges:

18   PARTIES

19   1.   Virginia Herold (Complainant) brings this Statement of Issues solely in her official

20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21   2.   On or about July 24, 2008, the Board of Pharmacy, received an application for

22 registration as a pharmacy technician from Regina Tovar Lewzader (Respondent). On or about

23 July 18, 2008, respondent certified under penalty of perjury to the truthfulness of all statements,

24 answers, and representations in the application. The Board denied the application on February

25 19, 2009.

26 ///

27 ///

28 ///

1

JURISDICTION

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

4. Section 4300 of the Code states:

. . .

(c) The board may refuse a license to any applicant guilty of unprofessional conduct.

. . . .

STATUTORY PROVISIONS

5. Section 480 of the Code states:

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

. . .

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

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

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.

. . . .

6. Section 492 of the Code states:

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 ([Healing Arts] 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.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

2

7. Section 4301 of the Code states:

The board shall take action against any holder of a license who is guilty of unprofessional conduct . . . . 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.

. . . .

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUG

9. Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2).

FIRST CAUSE FOR DENIAL OF APPLICATION

(Use of a Controlled Substance)

10. Respondent's application is subject to denial under Code sections 4300 for unprofessional conduct and 480(a)(3) in that respondent would be subject to discipline by the Board if she were a licensee under Code section 4301(h) for being under the influence of a controlled substance. The facts and circumstances of respondent's arrest for being under the influence of methamphetamine are set forth below:

a. On or about, April 15, 2004, respondent was at a party where she knowingly consumed a juice drink containing methamphetamine. The following day at approximately 1:00 p.m., respondent was a passenger in a vehicle that was stopped by a police officer for a broken

3

1   left rear brake light. The officer asked the driver of the car for the car's registration, and she said

2   the car belonged to respondent. The officer asked respondent for her name and respondent told

3   him her name was Vanessa Tovar and her date of birth was July 11, 1978. In reality this is

4   respondent's sister's name and birth date. As the officer spoke to respondent he noticed she was

5   fidgeting, had dry lips and was avoiding eye contact. The officer took her pulse which was

6   elevated to 98 beats per minute, and he had her perform the Rhomburg balance test which she

7   failed. He also noticed respondent had eyelid tremors and she estimated 12 seconds as 30

8   seconds. Based upon the officer's training and experience as a drug recognition expert he formed

9   the opinion that respondent was under the influence of drugs. Respondent admitted to the officer

10 that she had used methamphetamine the night before. Respondent was arrested. On the way to

11 the police station respondent also admitted that she had used her sister's name and birthday

12 because she was worried there were outstanding warrants against her.

13   b.   On May 21, 2004, a misdemeanor complaint was filed against respondent

14 alleging violations of Health and Safety Code section 11550(a) for being under the influence of

15 methamphetamine and Penal Code section 148.9(a) for making false representations to a police

16 officer. On June 16, 2004, respondent pleaded guilty and the court deferred entry of judgment,

17 permitting respondent to participate in a drug treatment program pursuant to Penal Code section

18 1000. On December 18, 2006, upon proof of successful completion of a drug treatment program,

19 the court dismissed the charges against respondent.

20   SECOND CAUSE FOR DENIAL OF APPLICATION

21   (Dishonesty)

22   11.   Respondent's application is subject to denial under Code sections 4300 for

23 unprofessional conduct in conjunction with 4301(f) and 480(a)(2) in that on April 16, 2004,

24 respondent made false representations to a police officer about her identity to benefit herself at

25 the risk of harming her sister, as set forth in paragraph 10, above.

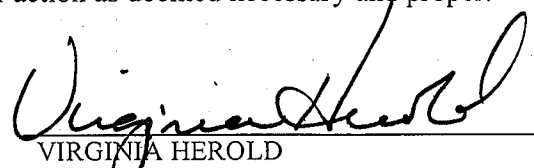26   PRAYER

27   WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,

28 and that following the hearing, the Board of Pharmacy issue a decision:

4

1   1.   Denying the application of Regina Tovar Lewzader for registration as a pharmacy

2 technician.

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

5 DATED: **10/27/09**

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

SD2009804697