

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 GILLIAN E. FRIEDMAN  
Deputy Attorney General  
4 State Bar No. 169207  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2564  
6 Facsimile: (213) 897-2804

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:

12 **NICHOLAS PETER BAIN**  
13 1401 E. San Antonio #203  
Colton, CA 92324

14 35770 County Line Road  
15 Yucaipa, CA 92399

16 Respondent.

Case No. SI 2009 3451

**STATEMENT OF ISSUES**

17  
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about November 13, 2007, the Board of Pharmacy (Board) received an  
23 application for a Pharmacy Technician Registration from Nicholas Peter Bain (Respondent). On  
24 or about October 30, 2007, Respondent certified under penalty of perjury to the truthfulness of all  
25 statements, answers, and representations in the application. The Board denied the application on  
26 February 27, 2009.

27 ///

28 ///



1 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
2 or profession for which the license was issued.

3 "(b) Notwithstanding any other provision of law, a board may exercise any authority to  
4 discipline a licensee for conviction of a crime that is independent of the authority granted under  
5 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
6 of the business or profession for which the licensee's license was issued.

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

13 6. Section 4300 provides, in pertinent part, that every license issued by the Board is  
14 subject to discipline, including suspension or revocation.

15 7. Section 4301 states, in pertinent part:

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

19 ....

20 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
21 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
22 whether the act is a felony or misdemeanor or not.

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

25 ....

26 "(l) The conviction of a crime substantially related to the qualifications, functions, and  
27 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
28 (commencing with Section 801) of Title 21 of the United States Code regulating controlled

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

15 ....

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

### 17 REGULATORY PROVISIONS

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

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

### 25 FIRST CAUSE FOR DENIAL OF APPLICATION

#### 26 (Conviction of Crimes)

27 9. Respondent's application is subject to denial under sections 4301, subdivision (1)  
28 and 480, subdivision (a)(1), in that Respondent was convicted of crimes, as follows:

1 a. On or about March 22, 2006, after pleading nolo contendere, Respondent was  
2 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)  
3 (driving while having 0.08% and more, by weight, of alcohol in his blood) in the criminal  
4 proceeding entitled *The People of the State of California v. Nicholas Peter Bain* (Super. Ct. San  
5 Bernardino County, 2006, No. TVA93812). The circumstances surrounding the conviction are  
6 that on or about November 12, 2005, Respondent drove a vehicle while having 0.08% and more,  
7 by weight, of alcohol in his blood.

8 b. On or about October 11, 2001, after pleading guilty, Respondent was convicted of  
9 one misdemeanor count of violating Vehicle Code section 23103, subdivision (a) (reckless  
10 driving) in the criminal proceeding entitled *The People of the State of California v. Nicholas*  
11 *Peter Bain* (Super. Ct. San Bernardino County, 2001, No. 188753NB). The circumstances  
12 surrounding the conviction are that on or about September 7, 2001, Respondent engaged in  
13 reckless driving on the highway.

14 c. On or about May 15, 2001, after pleading nolo contendere, Respondent was  
15 convicted of one felony count of violating Health and Safety Code section 11357, subdivision (a)  
16 (possession of concentrated cannabis) in the criminal proceeding entitled *The People of the State*  
17 *of California v. Nicholas Peter Bain* (Super. Ct. San Bernardino County, 2001, No. FBV3293).  
18 The Court sentenced Respondent to 90 days in San Bernardino County Jail and placed him on  
19 supervised probation for a period of 36 months, with terms and conditions. On or about  
20 September 12, 2002, the Court ordered Respondent's probation revoked, but reinstated, and  
21 sentenced him to 14 days in San Bernardino County Jail for violating term no. 2 of the terms and  
22 conditions of probation. The circumstances surrounding the conviction are that on or about  
23 January 17, 2001, Respondent was found to be in possession of concentrated cannabis.

## 24 SECOND CAUSE FOR DENIAL OF APPLICATION

### 25 (Dishonest Acts)

26 10. Respondent's application is subject to denial under sections 4301, subdivision (f)  
27 and 480, subdivision (a)(2), in that Respondent committed dishonest acts with the intent to  
28 substantially benefit himself, or substantially injure another, by failing to reveal his complete

1 criminal history on his application for licensure. Specifically, Respondent failed to disclose the  
2 conviction identified in paragraph 10, subparagraph (b), set forth above.

3 **THIRD CAUSE FOR DENIAL OF APPLICATION**

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

5 11. Respondent's application is subject to denial under sections 4301, subdivision (g) and  
6 480, subdivision (c), in that Respondent knowingly made a false statement of fact in his  
7 application, that he certified under penalty of perjury, where he failed to disclose his complete  
8 criminal history on his application for licensure. Specifically, Respondent failed to disclose the  
9 conviction identified in paragraph 10, subparagraph (b), set forth above.

10 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

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

12 12. Respondent's application is subject to denial under sections 4301, subdivision (p)  
13 and 480, subdivision (a)(3), in that Respondent committed acts which if done by a licentiate  
14 would be grounds for suspension or revocation of his license. Respondent was convicted of  
15 crimes substantially related to the qualifications, functions, or duties of a pharmacy technician  
16 which to a substantial degree evidence her present or potential unfitness to perform the functions  
17 authorized by his license in a manner consistent with the public health, safety, or welfare, in  
18 violation of sections 490 and 4301, subdivision (l), in conjunction with California Code of  
19 Regulations, title 16, section 1770. Complainant refers to, and by this reference incorporates, the  
20 allegations set forth above in paragraph 10, subparagraphs (a) through (c), inclusive, as though set  
21 forth fully.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

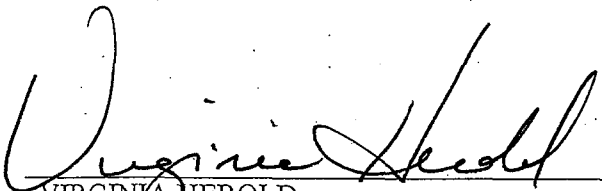
28 ///

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 the application of Respondent for a Pharmacy Technician Registration; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 3/16/10



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

LA2009604177  
60498865.doc  
jz(1/06/10)