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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  
12 Against:

Case No. 3771

13 **BENJAMIN CARDENAS**  
14 **a.k.a. BEN MONIKER**  
13702 Flallon Avenue  
Norwalk, CA 90650

**STATEMENT OF ISSUES**

15 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 May 13, 2009, the Board of Pharmacy (Board) received an application  
22 for Registration as a Pharmacy Technician from Benjamin Cardenas, also known as Ben Moniker  
23 (Respondent). On or about October 3, 2008, Respondent certified under penalty of perjury to the  
24 truthfulness of all statements, answers, and representations in the application. The Board denied  
25 the application on April 13, 2010.

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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  
10 means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any  
11 action that a board is permitted to take following the establishment of a conviction may be  
12 taken when the time for appeal has elapsed, or the judgment of conviction has been  
13 affirmed on appeal, or when an order granting probation is made suspending the imposition  
14 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the  
15 Penal Code.

16 “(2) Done any act involving dishonesty, fraud, or deceit with the intent to  
17 substantially benefit himself or herself or another, or substantially injure another.

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

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

23 . . . .

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

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1           5.     Section 490 states, in pertinent part:

2           “(a)   In addition to any other action that a board is permitted to take against a licensee, a  
3 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
4 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
5 or profession for which the license was issued.

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

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

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

18          7.     Section 4301 states, in pertinent part:

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

22                 . . . .

23          “(l)   The conviction of a crime substantially related to the qualifications, functions, and  
24 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
25 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
26 substances or of a violation of the statutes of this state regulating controlled substances or  
27 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
28 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 or  
5 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
6 of this provision. The board may take action when the time for appeal has elapsed, or the  
7 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
8 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
9 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
10 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
11 indictment.”

12 . . . .

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

14 **REGULATORY PROVISIONS**

15 8. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

22 **FIRST CAUSE FOR DENIAL OF APPLICATION**

23 *(Convictions of Crimes)*

24 9. Respondent’s application is subject to denial under section section 480, subdivision  
25 (a)(1), in that Respondent was convicted of crimes as follows:

26 a. On or about August 4, 2009, after pleading nolo contendere, Respondent was  
27 convicted of one misdemeanor count of violating Penal Code section 243, subdivision (e)(1)  
28 [spousal battery] in the criminal proceeding entitled *The People of the State of California v.*

1 *Benjamin Cardenas* (Super. Ct., Los Angeles County, 2009, No. 9BF03698). The Court  
2 sentenced Respondent to 20 days in Los Angeles County Jail, issued a protective order, and  
3 placed him on 3 years probation, with terms and conditions. The circumstances surrounding the  
4 conviction are that on or about August 2, 2009, Respondent was angry with the victim for not  
5 coming home. When she arrived at the house, he pulled her out of her vehicle, punched her, and  
6 kicked her.

7       b. On or about June 29, 2005, after pleading nolo contendere, Respondent was convicted  
8 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving  
9 under the influence of alcohol or drugs] in the criminal proceeding entitled *The People of the*  
10 *State of California v. Benjamin Cardenas* (Super. Ct., Los Angeles County, 2005, No.  
11 5CM03850). The Court sentenced Respondent to 2 days in Los Angeles County Jail and placed  
12 him on 36 months probation, with terms and conditions. On or about October 5, 2007,  
13 Respondent violated the terms and conditions of his probation and was sentenced to 13 additional  
14 days in Los Angeles County Jail. The circumstances surrounding the conviction are that on or  
15 about April 29, 2005, Respondent drove a vehicle while under the influence of alcohol or drugs.

16       c. On or about May 17, 2005, after pleading nolo contendere, Respondent was convicted  
17 of one misdemeanor count of violating Vehicle Code section 12500, subdivision (a) [driving  
18 without a valid driver's license] in the criminal proceeding entitled *The People of the State of*  
19 *California v. Benjamin Cardenas* (Super. Ct., Los Angeles County, 2005, No. 5LC00432). The  
20 Court placed Respondent on 1 year probation, with terms and conditions. The circumstances  
21 surrounding the conviction are that on or about December 13, 2004, Respondent drove a vehicle  
22 without a valid driver's license. He was arrested for a violation of Vehicle Code section 14601.5,  
23 subdivision (a) [driving a vehicle while his driving privilege was suspended or revoked and with  
24 knowledge].

25       d. On or about August 18, 2004, after pleading guilty, Respondent was convicted of  
26 one misdemeanor count of violating Vehicle Code section 23103, subdivision (a) [reckless  
27 driving] in the criminal proceeding entitled *The People of the State of California v. Benjamin*  
28 *Cardenas* (Super. Ct., Los Angeles County, 2004, No. 4SB05855). The Court placed Respondent

1 on 24 months probation, with terms and conditions. The circumstances surrounding the  
2 conviction are that on or about July 17, 2004, Respondent drove a upon a highway in willful  
3 or wanton disregard for the safety of persons or property. He was arrested for violating Vehicle  
4 Code section 23152, subdivision (a) [driving while under the influence of alcohol or drugs].  
5 During the booking procedure, Respondent submitted to a breath test that resulted in a blood-  
6 alcohol content level of 0.15% on the first reading and 0.16% on the second reading.

7 e. On or about June 7, 2002, after pleading nolo contendere, Respondent was convicted  
8 of one misdemeanor count of violating Penal Code section 496, subdivision (a) [receiving known  
9 stolen property] in the criminal proceeding entitled *The People of the State of California v.*  
10 *Benjamin Cardenas* (Super. Ct., Los Angeles County, 2002, No. 2DW02936). The Court  
11 sentenced Respondent to 30 days in Los Angeles County Jail and placed him on 36 months  
12 probation, with terms and conditions. The circumstances surrounding the conviction are that on  
13 or about June 5, 2002, Respondent received and withheld known stolen property, to wit: a  
14 computer printer and software that had been stolen from Cesar Chavez School.

### 15 **SECOND CAUSE FOR DENIAL OF APPLICATION**

#### 16 *(Acts Involving Dishonesty, Fraud, or Deceit)*

17 10. Respondent's application is subject to denial under section 480, subdivision (a)(2), in  
18 that on or about June 5, 2002, Respondent committed dishonest acts, fraud, or deceit with the  
19 intent to substantially benefit himself, or substantially injure another. Complainant refers to, and  
20 by this reference incorporates, the allegations set forth above in paragraph 9, subparagraph (e), as  
21 though set forth fully.

### 22 **THIRD CAUSE FOR DENIAL OF APPLICATION**

#### 23 *(Knowingly Made a False Statement of Fact)*

24 11. Respondent's application is subject to denial under section 480, subdivision (c), in  
25 that on or about October 3, 2008, Respondent knowingly made a false statement of fact, by failing  
26 to disclose his criminal history on his application for licensure. In addition, Respondent signed  
27 under penalty of perjury, under the laws of the State of California that the foregoing was true and  
28 correct on page one of his application for licensure. Complainant refers to, and by this reference

1 incorporates, the allegations set forth above in paragraph 9, subparagraphs (a) through (e),  
2 inclusive, as though set forth fully.

3 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

4 *(Acts Warranting Denial of Licensure)*

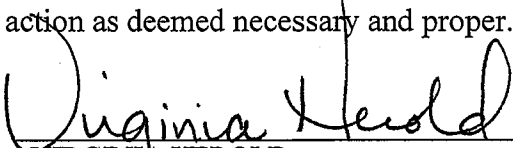
5 12. Respondent's application is subject to denial under sections 480, subdivision  
6 (a)(3)(A), (a)(3)(B), and 4301, subdivision (p), in that Respondent committed acts which if done  
7 by a licentiate of the business or profession would be grounds for suspension or revocation of his  
8 license. Respondent was convicted of a crime substantially related to the qualifications,  
9 functions, or duties of a pharmacy technician which to a substantial degree evidence his present  
10 or potential unfitness to perform the functions authorized by his license in a manner consistent  
11 with the public health, safety, or welfare, in violation of sections 4301, subdivision (l) and 490, in  
12 conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,  
13 and by this reference incorporates, the allegations set forth above in paragraph 9, subparagraphs  
14 (a) through (e), inclusive, as though set forth fully.

15 **PRAYER**

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

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

20 DATED: 5/27/11

21   
22 VIRGINIA HEROLD  
23 Executive Officer  
24 Board of Pharmacy  
25 Department of Consumer Affairs  
26 State of California  
27 Complainant

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