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

11 In the Matter of the Statement of Issues
Against:

Case No. 3829

12 **RUDY VALLES**
13 **P.O. Box 8022**
14 **Moreno Valley, CA 92552**

STATEMENT OF ISSUES

15 Respondent.

16
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 4, 2009, the Board of Pharmacy, Department of Consumer Affairs
22 received an application for a Pharmacy Technician Registration from Rudy Valles (Respondent).

23 On or about April 9, 2009, Rudy Valles certified under penalty of perjury to the truthfulness of all
24 statements, answers, and representations in the application. The Board denied the application on
25 May 3, 2010.

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1 **JURISDICTION**

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

5 4. Section 4300, subdivision (c) of the Code states, in pertinent part, that the Board may
6 refuse a license to any applicant guilty of unprofessional conduct. The Board may, in its sole
7 discretion, issue a probationary license to any applicant for a license who is guilty of
8 unprofessional conduct and who has met all other requirements for licensure.

9 **STATUTORY PROVISIONS**

10 5. Section 475 of the Code states:

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

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

15 (2) Conviction of a crime.

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

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

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

24 6. Section 480 states, in pertinent part:

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

27 (1) Been convicted of a crime. A conviction within the meaning of this
28 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.

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

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

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

10 7. Section 482 of the Code states:

11 Each board under the provisions of this code shall develop criteria to evaluate
12 the rehabilitation of a person when:

13 (a) Considering the denial of a license by the board under Section 480; or

14 (b) Considering suspension or revocation of a license under Section 490.

15 Each board shall take into account all competent evidence of rehabilitation
16 furnished by the applicant or licensee.

17 8. Section 4301 of the Code states:

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

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

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27 (l) The conviction of a crime substantially related to the qualifications,
28 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. 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. A plea or verdict of guilty or a conviction following a plea of nolo
contendere is deemed to be a conviction within the meaning of this provision. The
board may take action when the time for appeal has elapsed, or the judgment of

1 conviction has been affirmed on appeal or when an order granting probation is made
2 suspending the imposition of sentence, irrespective of a subsequent order under
3 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
4 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
5 dismissing the accusation, information, or indictment.

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REGULATORY PROVISIONS

9. California Code of Regulations, title 16, section 1768 states:

(a) Where the board has denied an application for a license, the earliest date on which the applicant may reapply for a license is one year after the effective date of the denial.

(b) All competent evidence of rehabilitation presented will be considered upon a reapplication. The board shall use the criteria listed in section 1769 when considering evidence of rehabilitation.

10. California Code of Regulations, title 16, section 1769 states:

(a) When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

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11. 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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1 FIRST CAUSE FOR DENIAL OF APPLICATION

2 (October 5, 2006 Criminal Conviction for Grand Theft on July 25, 2006)

3 12. Respondent's application for registration as a pharmacy technician is subject to denial
4 under sections 480, subdivision (a)(1) and 4301, subdivision (l) of the Code in that Respondent
5 was convicted of a crime that is substantially related to the qualifications, duties, and functions of
6 a pharmacy technician. The circumstances are as follows:

7 a. On or about October 5, 2006, in a criminal proceeding entitled *People of the*
8 *State of California vs. Rudy Valles*, in Los Angeles County Superior Court Case number
9 GA066454, Respondent was convicted on his plea of no contest to violating Penal Code section
10 487, subdivision (a), grand theft, a felony.

11 b. As a result of the conviction, on or about October 5, 2006, Respondent was
12 sentenced to one day in the Los Angeles County Jail (with credit for one day), and placed on three
13 years formal probation. Respondent was further ordered to complete 45 days of public work
14 service, pay restitution, and comply with standard felony probation terms.

15 c. The circumstances that led to the conviction are that on or about July 25, 2006,
16 Respondent, who was employed by a broadcasting company as a security guard, was observed by
17 a coworker stealing a studio grade digital camera (with an MSRP of \$39,800 when new).
18 Respondent cut a cable and hid the camera behind a wall in the studio. The coworker confronted
19 Respondent and asked him if he intended to steal the camera. Respondent replied "yes" and that
20 no one would know anything unless the coworker said something. The coworker reported the
21 incident to management who confirmed that the camera was missing and that Respondent left
22 work several hours before his shift ended. The Burbank Police Department was notified and an
23 investigator contacted Respondent at the studio the next morning. Respondent admitted to the
24 investigator that he had taken the camera because he needed the money and that he had received
25 \$100 for it from a pawn shop. Respondent took investigators to the pawn shop where the camera
26 was recovered.

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SECOND CAUSE FOR DENIAL OF APPLICATION

(Commission of Dishonest Act)

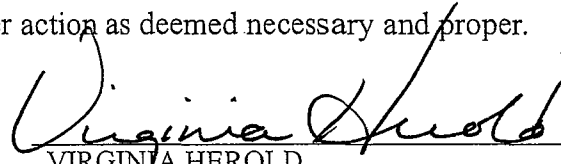
13. Respondent's application for registration as a pharmacy technician is subject to denial under sections 480, subdivision (a)(2) and 4301, subdivision (f) of the Code in that on or about July 25, 2006, Respondent committed an act of dishonesty and deceit with the intent to substantially benefit himself, as detailed in paragraph 12, above.

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 Rudy Valles for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 12/17/10



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

SD2010702503