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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues Against:

Case No. 3946

11 **REYNERIO FERNANDEZ-OROZCO**
12 **251 Ebony Way**
13 **Hayward, CA 94544**

STATEMENT OF ISSUES

14 **Applicant for Pharmacy Technician License**

15 Respondent.

16 Complainant alleges:

17 PARTIES

- 18 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 20 2. On or about October 21, 2009, the Board of Pharmacy, Department of Consumer
21 Affairs received an application for an Application for Registration as a Pharmacy Technician
22 from Reynerio Fernandez-Orozco (Respondent). On or about September 16, 2009, Reynerio
23 Fernandez-Orozco certified under penalty of perjury to the truthfulness of all statements, answers,
24 and representations in the application. The Board denied the application on August 18, 2010.

25 JURISDICTION

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

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STATUTORY AND REGULATORY PROVISIONS

4. Section 4300, subdivision (c), of the Code states:

“(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy”

5. Section 4301 of the Code provides, in pertinent part, that “unprofessional conduct” is defined to include, but not be limited to, any of the following:

(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.

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

6. Section 480 of the Code 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. . . . Any action which a board is permitted to take following the establishment of a conviction may be taken . . . 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 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 . . . [license].”

1 b. On or about August 26, 2008, Respondent pleaded nolo contendere and was
2 found guilty of both counts in the Complaint. Imposition of sentence was suspended in favor of
3 an order of probation for three (3) years, on terms and conditions including credit for time served
4 of one (1) day in County Jail, enrollment in the 3-month First Offender Program, fines and fees.

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6 SECOND CAUSE FOR DENIAL OF APPLICATION

7 (Dangerous or Injurious Use of Alcohol)

8 9. Respondent's application is subject to denial under the following section(s) of the
9 Code: 480(a)(3) by reference to 4301(h); and/or 4300(c) by reference to 4301(h), in that, as
10 described in paragraph 8 above, Respondent made dangerous or injurious use of alcohol.

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12 THIRD CAUSE FOR DENIAL OF APPLICATION

13 (Conviction of Substantially Related Crime(s))

14 10. Respondent's application is subject to denial under the following section(s) of the
15 Code: 480(a)(1); 480(a)(3) by reference to 4301(l); and/or 4300(c) by reference to 4301(l) and
16 California Code of Regulations, title 16, section 1770, for conviction of a substantially related
17 crime, in that on or about January 12, 2010, in *People v. Reyneria Ivan Fernandez-Orozco*, Case
18 No. CC964037 in Santa Clara County Superior Court, Respondent was convicted of violating (1)
19 Vehicle Code section 23152(b) (Driving with blood alcohol level of 0.08% or more), with a prior
20 conviction allegation regarding his 2008 conviction, a misdemeanor; (2) Vehicle Code section
21 14601.1(a) (Driving while license suspended or revoked for specified reasons), a misdemeanor;
22 (3) Vehicle Code section 14601.2(a) (Driving while license suspended or revoked due to DUI);
23 and (4) Vehicle Code section 16028(a) (Failure to provide evidence of financial responsibility
24 [proof of insurance]), an infraction. The conviction was entered as follows:

25 a. On or about November 28, 2009, Respondent was observed driving erratically
26 by officers of the California Highway Patrol. After he was pulled over, he exhibited signs and an
27 odor of intoxication, and signs of impairment under Field Sobriety Testing. He also admitted to
28 having consumed alcohol before driving. A blood test confirmed a level of 0.13% BAC.

1 b. On or about December 14, 2009, Respondent was charged by Misdemeanor
2 Complaint in Case No. CC964037 under (1) Vehicle Code section 23152(a) (Driving under
3 influence of alcohol), a misdemeanor, with a prior conviction allegation; (2) Vehicle Code section
4 23152(b) (Driving with blood alcohol of 0.08% or more), a misdemeanor, with a prior conviction
5 allegation; (3) Vehicle Code section 14601.1(a) (Driving while license suspended or revoked for
6 specified reasons), a misdemeanor; (4) Vehicle Code section 14601.2(a) (Driving while license
7 suspended or revoked due to DUI); and (5) Vehicle Code section 16028(a) (Failure to provide
8 evidence of financial responsibility [proof of insurance]), an infraction.

9 b. On or about January 12, 2010, Respondent pleaded guilty to counts (2), (3), (4)
10 and (5) in the Complaint. Count (1) was dismissed pursuant to plea. Imposition of sentence was
11 suspended in favor of an order of court probation for three (3) years, on terms and conditions
12 including forty (40) days in WWP (mandated work-release program), enrollment in the Multiple
13 Offender Program, an Ignition Interlock Device (IID) placed on his vehicle for the three (3) year
14 probation period, and multiple fines and fees.

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16 FOURTH CAUSE FOR DENIAL OF APPLICATION

17 (Dangerous or Injurious Use of Alcohol)

18 11. Respondent's application is subject to denial under the following section(s) of the
19 Code: 480(a)(3) by reference to 4301(h); and/or 4300(c) by reference to 4301(h), in that, as
20 described in paragraph 10 above, Respondent made dangerous or injurious use of alcohol.

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22 FIFTH CAUSE FOR DENIAL OF APPLICATION

23 (Unprofessional Conduct)

24 12. Respondent's application is subject to denial under the following section(s) of the
25 Code: 480(a)(3) by reference to 4301; and/or 4300(c) by reference to 4301, in that, as described
26 in paragraphs 8-11 above, Respondent engaged in unprofessional conduct.

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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 Reynerio Fernandez-Orozco to be a pharmacy technician;
2. Taking such other and further action as is deemed necessary and proper.

DATED: 6/21/11 Virginia Herold

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

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