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**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Statement of Issues
Against:**

Case No. 3949

MARK COLLADO SAMSON
244 East Vernon Street, Apt. #7
Long Beach, CA 90806

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

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

2. On or about October 7, 2009, the Board of Pharmacy (Board) received an application for registration as a Pharmacy Technician from Mark Collado Samson (Respondent). On or about September 30, 2009, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on August 18, 2010.

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JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 480 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:

9 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
10 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
11 board is permitted to take following the establishment of a conviction may be taken when the
12 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
13 an order granting probation is made suspending the imposition of sentence, irrespective of a
14 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.

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

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

²² 5. Section 490 states, in pertinent part:

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

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under

1 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
2 of the business or profession for which the licensee's license was issued.

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

9 6. Section 492 states, in pertinent part:

10 "Notwithstanding any other provision of law, successful completion of any diversion
11 program under the Penal Code, or successful completion of an alcohol and drug problem
12 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
13 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
14 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
15 division, from taking disciplinary action against a licensee or from denying a license for
16 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
17 record pertaining to an arrest. This section shall not be construed to apply to any drug diversion
18 program operated by any agency established under Division 2 (commencing with Section 500) of
19 this code, or any initiative act referred to in that division."

20 7. Section 4300 provides in pertinent part, that every license issued by the Board is
21 subject to discipline, including suspension or revocation."

22 8. Section 4301 states, in pertinent part:

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

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

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5 "(i) The conviction of a crime substantially related to the qualifications, functions, and
6 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
7 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
8 substances or of a violation of the statutes of this state regulating controlled substances or
9 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
10 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
11 The board may inquire into the circumstances surrounding the commission of the crime, in order
12 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
13 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
14 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
15 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
16 of this provision. The board may take action when the time for appeal has elapsed, or the
17 judgment of conviction has been affirmed on appeal or when an order granting probation is made
18 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
19 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
20 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
21 indictment.

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23 "(j) The violation of any of the statutes of this state, or any other state, or of the United
24 States regulating controlled substances and dangerous drugs.

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26 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
27 violation of or conspiring to violate any provision or term of this chapter or of the applicable

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federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

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

REGULATORY PROVISIONS

9. California Code of Regulations, title 16, section 1770 states, in pertinent part:
"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."

CONTROLLED SUBSTANCES

10. "Methamphetamine," is a Schedule II controlled substance as defined in Health and Safety Code section 11055(d)(2) and is categorized as a dangerous drug pursuant to section 4022.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Criminal Convictions)

11. Respondent's application is subject to denial under section 480, subdivision (a)(1), in that Respondent was convicted of a crime as follows:

a. On or about March 4, 2011, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Penal Code section 484, subdivision (a) [petty theft] in the criminal proceedings entitled *The People of the State of California v. Mark Collado Samson* (Super. Ct. Los Angeles County, 2011, No. 1BF00472). The Court placed Respondent on 36 months probation, with terms and conditions. The circumstances surrounding the conviction are that on or about December 5, 2010, Respondent stole, took, and carried away personal property of another, to wit: hair wax. The Los Angeles County Sheriff's Department responded to a call regarding a petty theft in the clothing store, Hollister. Respondent was inside the store and was being detained by a loss prevention officer. Respondent had taken hair wax

1 from the store and put it in his jacket pocket. He attempted to leave the store without paying for
2 the product when he was stopped by the loss prevention officer. The loss prevention officer
3 stated that Respondent pushed her as he attempted to flee the store. Respondent was arrested for
4 violation of Penal Code section 484, subdivision (a) [petty theft].

5 b. On or about June 22, 2006, after pleading nolo contendere, Respondent was convicted
6 of one misdemeanor count of violating Health & Safety Code section 11377(a) [possession of a
7 controlled substance] in the criminal matter entitled *The People of the State of California v. Mark*
8 *Collado Samson* (Super. Ct. Los Angeles County, 2006, No. 6CP03701). On the same date, after
9 pleading nolo contendere, Respondent was also convicted of one misdemeanor count of violating
10 Penal Code section 12020, subdivision (a)(1) [possession of deadly weapon] in the criminal
11 proceeding entitled *The People of the State of California v. Mark Collado Samson* (Super. Ct. Los
12 Angeles County, 2006, No. 6CP03701). The Court placed Respondent on 3 years probation, with
13 terms and conditions. The circumstances surrounding the convictions are that on or about May
14 13, 2006, Respondent was contacted by the Los Angeles County Sheriff's Department during a
15 traffic stop. When asked if he had anything illegal on his person, Respondent admitted he had
16 some "crystal"¹ and a knife in the vehicle. While conducting a search of Respondent's vehicle,
17 the officer found a shuriken² on the driver's side door panel. In addition, the officer retrieved a
18 cigarette box containing a paper bindle. The paper bindle contained a clear plastic baggie with a
19 clear-like substance resembling methamphetamine. Respondent indicated he had quit using
20 methamphetamine and had been clean for three months. He subsequently stated that he recently
21 started using methamphetamine and he promised to quit if he was not taken to jail. Respondent
22 was arrested for violation of Penal Code section 12020, subdivision (a)(1) [possession of a deadly
23 weapon] and Health and Safety Code section 11377, subdivision (a) [possession of a controlled
24 substance].

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¹ Referring to methamphetamine.

28 ² Also known as a ninja star, knife-like weapon.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Dishonest Acts, Fraud, or Deceit)

12. Respondent's application is subject to denial under section 480, subdivision (a)(2), in that on or about December 5, 2010, Respondent committed dishonest acts, fraud, or deceit with the intent to substantially benefit himself, or substantially injure another. Complainant refers to and by this reference incorporates, the allegations set forth above in paragraph 11, subparagraph (a), as though set forth fully.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Acts Warranting Denial of Licensure)

13. Respondent's application is subject to denial under sections 4301, subdivision (p) and 480, subdivisions (a)(3)A and (a)(3)B, in that Respondent committed acts which if done by a licentiate of the business and profession in question, would be grounds for suspension or revocation of his license as follows:

a. Respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a pharmacy technician which to a substantial degree evidence his present or potential unfitness to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare, in violation of sections 4031, subdivision (i), and 490, in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 11, subparagraphs (a) and (b), inclusive, as though set forth fully.

b. On or about December 5, 2010, Respondent committed acts involving dishonesty, fraud, or deceit, in violation of section 4301, subdivision (f). Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 11, subparagraph (a), as though set forth fully.

c. On or about May 13, 2006, Respondent was found to be in possession of a controlled substance, to wit: Methamphetamine, in violation of section 4301, subdivisions (j) and (o). Complainant refers to, and by this reference incorporates, the allegations set forth above in subparagraph 11, subparagraph (b), as though set forth fully.

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 registration as a Pharmacy Technician;
and
2. Taking such other and further action as deemed necessary and proper.

DATED: 11/11/11

er action as deemed necessary and proper.

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

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