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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. 3995

12 **ALLAN DIAZ DELEON**
13 **2382 Adirondack Row, Unit 1**
14 **San Diego, CA 92139**

STATEMENT OF ISSUES

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 July 6, 2009, the Board of Pharmacy, Department of Consumer Affairs
21 received an application for a Pharmacy Technician Registration from Allan Diaz DeLeon
22 (Respondent). On or about June 17, 2009, Allan Diaz DeLeon certified under penalty of perjury
23 to the truthfulness of all statements, answers, and representations in the application. The Board
24 denied the application on October 26, 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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4. Section 480 of the Code states:

(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. A conviction within the meaning of this 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.

(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.

(B) 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 business or profession for which application is made. . . .

5. Section 4300, subdivision (c) of the Code states "The board may refuse a license to any applicant guilty of unprofessional conduct."

STATUTORY PROVISIONS

6. Section 475 of the Code states:

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

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

(2) Conviction of a crime.

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

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

....

7. Section 482 of the Code states:

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

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

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

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

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

9. Section 4301 of the Code states:

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

....

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

....

(l) The conviction of a crime substantially related to the qualifications, 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 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 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of

1 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
2 dismissing the accusation, information, or indictment. . . .

3 **REGULATORY PROVISIONS**

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

5 (a) When considering the denial of a facility or personal license under Section
6 480 of the Business and Professions Code, the board, in evaluating the rehabilitation
7 of the applicant and his present eligibility for licensing or registration, will consider
8 the following criteria:

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

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

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

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

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

19

20 11. California Code of Regulations, title 16, section 1770 states:

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

28 **FIRST CAUSE FOR DENIAL OF APPLICATION**

(January 8, 1992 Criminal Conviction for Assault

With Intent to Commit Rape on December 9, 1990)

12. Respondent's application for registration as a pharmacy technician is subject to denial
under sections 480, subdivision (a)(1) of the Code in that Respondent was convicted of a crime
that is substantially related to the qualifications, duties, and functions of a pharmacy technician.

The circumstances are as follows:

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1 a. On or about January 8, 1992, in a criminal proceeding entitled *People of the*
2 *State of California v. Alan Diaz Deleon*, in San Diego County Superior Court, case number
3 CR119966, Respondent was convicted on his plea of guilty to violating Penal Code section 220,
4 assault with intent to commit rape, a felony. In the plea agreement, which dismissed Count 1
5 (forcible rape, Pen. Code, § 261(2)), and Count 2 (rape by foreign object, Pen. Code, § 289(a)),
6 Respondent stated that he pled guilty to avoid the potential of more serious punishment if the
7 matter went before a jury.

8 b. As a result of the conviction, on or about February 5, 1992, Respondent was
9 sentenced to serve 270 days in the county jail, with credit for 146 days. Respondent was placed
10 on formal probation for a period of three years, and ordered to pay fees, fines, and restitution in
11 the amount of \$1,600, plus the cost of felony probation. Respondent was also ordered to register
12 as a sex offender. On or about April 18, 2007, the court granted Respondent's Petition for Relief,
13 set aside the conviction, and dismissed the charges, pursuant to Penal Code section 1203.4.

14 c. The circumstances that led to the conviction are that on or about December 9,
15 1990, in National City, California, Respondent sexually assaulted a female victim.

16 **SECOND CAUSE FOR DENIAL OF APPLICATION**

17 **(Commission of Act That if Done by a Licentiate**

18 **Would be Grounds for Suspension or Revocation of License)**

19 13. Respondent's application for registration as a pharmacy technician is subject to denial
20 under section 480, subdivision (a)(3)(A) in that he committed acts that would be grounds for
21 suspension or revocation of a pharmacy technician registration as follows:

22 a. Respondent was convicted of a crime substantially related to the qualifications,
23 functions, and duties of a pharmacy technician, as detailed in paragraph 12, above, which is a
24 violation of section 4301, subdivision (l) of the Code.

25 b. Respondent committed a sexual assault, an act of moral turpitude, as detailed in
26 paragraph 12, above, which is a violation of section 4301, subdivision (f) of the Code

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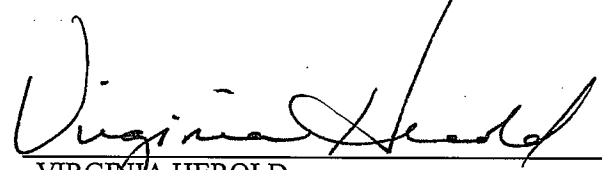
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PRAYER

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 Allan Diaz DeLeon for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 5/27/11



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

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