

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 TERRENCE M. MASON
Deputy Attorney General
4 State Bar No. 158935
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-6294
6 Facsimile: (213) 897-2804

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. 4044

13 **HUGO ALBERTO MONTANO**
10644 Laurel Canyon
14 Pacoima, CA 91331

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 March 24, 2010, the Board of Pharmacy (Board) received an application
21 for Pharmacy Technician Registration from Hugo Alberto Montano (Respondent). On or about
22 August 3, 2009, Respondent certified under penalty of perjury to the truthfulness of all
23 statements, answers, and representations in the application. The Board denied the application on
24 October 18, 2010.

25 **JURISDICTION**

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

1 4. Section 480 states, in pertinent part:

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

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

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

10 5. Section 492 states, in pertinent part:

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

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

23 7. Section 4301 states, in pertinent part:

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

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

3

4 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
5 violation of or conspiring to violate any provision or term of this chapter or of the applicable
6 federal and state laws and regulations governing pharmacy, including regulations established by
7 the board or by any other state or federal regulatory agency.

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

9 8. **CONTROLLED SUBSTANCE**

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

13 **CAUSE FOR DENIAL OF APPLICATION**

14 **(Acts Warranting Denial of Licensure)**

15 9. Respondent's application is subject to denial under sections 4301, subdivision (p) and
16 480, subdivisions (a)(3)(A) and (a)(3)(B), in that Respondent committed acts which if done by a
17 licentiate of the business and profession, would be grounds for suspension or revocation of his
18 license as follows:

19 a. On or about April 16, 2009, during an investigation of an assault at a bar, Los
20 Angeles Police contacted Respondent. During a consent search of Respondent's person, an
21 officer recovered a small folded up paper from Respondent's pocket containing
22 methamphetamine. Respondent was subsequently arrested for violating Health and Safety section
23 11377, subdivision (a) [possession of a controlled substance].

24 b. Respondent was found to be in possession of a controlled substance, to wit:
25 Methamphetamine, in violation of section 4301, subdivisions (j) and (o).


26 **PRAYER**

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

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

DATED: 7/22/13


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

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