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7	Attorneys for Complainant	
8.	BEFORE THE BOARD OF PHARMACY	
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
10	STATE OF C	ALIFURNIA
11	In the Matter of the Statement of Issues	Case No. 4099
12	Against:	
13	JORGE ANTONIO GALVEZ 1449 Tamarind Ave., Apt. #3	STATEMENT OF ISSUES
14	Los Angeles, CA 90028	
15	Applicant for Pharmacy Technician	
16	Registration	
17	Respondent.	
18	Complainant alleges:	
19	<u>PARTIES</u>	
20	1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official	
21	capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.	
22	2. On or about June 14, 2010, the Board of Pharmacy (Board) received an application	
23	for a Pharmacy Technician Registration from Jorge Antonio Galvez (Respondent). On or about	
24	May 20, 2010, Respondent certified under penalty of perjury to the truthfulness of all statements,	
25	answers, and representations in the application. The Board denied the application on April 28,	
26	2011.	
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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 provides, 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. 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.
- "(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license."
 - 5. Section 490 provides, in pertinent part
- "(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a

crime, if the crime is substantially related to the qualifications, functions, or duties of the business 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 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.
- "(c) 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."
- 6. Section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.
 - 7. Section 4301 provides, in pertinent part:

"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.

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"(1) 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

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

indictment.

- "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.
 - "(p) Actions or conduct that would have warranted denial of a license."

REGULATORY PROVISIONS

8. 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."

FIRST CAUSE FOR DENIAL OF APPLICATION

(Conviction of a Crime)

- 9. Respondent's application is subject to denial under section 480, subdivisions (a)(1), (a)(2), and (a)(3), in that Respondent was convicted of a crime as follows:
- a. On or about May 13, 2010, after pleading *nolo contendere*, Respondent was convicted of one misdemeanor count of violating Penal Code section 484G, subdivision (a) [fraud], in the criminal proceedings entitled *The People of the State of California v. Jorge Antonio Galvez* (Super. Ct. Los Angeles County, 2009, No. OHY00043). The Court sentenced Respondent to serve 90 days in the Los Angeles County Jail, placed him on probation for a period of 36 months, and fined him. The circumstances surrounding the conviction are that on or about October 27, 2009, Respondent with the intent to defraud another person, used for the purpose of obtaining money, goods, services, or anything else of value, an access card or access card account information that was altered, or obtained, knowing that the card or signature was forged, expired, or revoked.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Acts Warranting Denial of Licensure)

- 10. 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 an act which if done by a licentiate of the business and profession in question, would be grounds for suspension or revocation of her license as follows:
- a. Respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a pharmacy technician which to a substantial degree evidence her present or potential unfitness to perform the functions authorized by her license in a manner consistent with the public health, safety, or welfare, in violation of sections 4301, 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 9, subparagraph (a), inclusive, as though set forth fully.

	h On or about May 13, 2010. Respondent was convicted of a crime involving acts of	
1	b. On or about May 13, 2010, Respondent was convicted of a crime involving acts of	
2	moral turpitude, dishonesty, fraud, or deceit in violation of section 4301, subdivision (f).	
3	Complainant refers to, and by this reference incorporates, the allegations set forth above in	
4	paragraph 9, subparagraph (a), inclusive, as though set forth fully.	
5	<u>PRAYER</u>	
6	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,	
7	and that following the hearing, the Board issue a decision:	
8	1. Denying the application of Jorge Antonio Galvez for registration as a Pharmacy	
9	Technician; and	
10	2. Taking such other and further action as deemed necessary and proper.	
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12	DATED: 3/19/12 Jugine Justo	
13	VIRGINIA HEROLD Executive Officer	
14	Board of Pharmacy Department of Consumer Affairs	
15	State of California Complainant	
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