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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
Against:

Case No. 4138

12 **SAMUEL AGUILAR**
13 5641 Rosemead Blvd, Apt. 108
14 Pico Rivera, CA 90660

STATEMENT OF ISSUES

15 Applicant for Pharmacy Technician
16 Registration

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about August 17, 2010, the Board of Pharmacy (Board) received an application
24 for Pharmacy Technician Registration from Samuel Aguilar (Respondent). On or about May 10,
25 2010, Samuel Aguilar certified under penalty of perjury to the truthfulness of all statements,
26 answers, and representations in the application. The Board denied the application on April 28,
27 2011.

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1 **JURISDICTION**

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

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

7 **STATUTORY PROVISIONS**

8 5. Section 475 provides in part:

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

11

12 "(2) Conviction of a crime.

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

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

17 "(b) Notwithstanding any other provisions of this code, the provisions of this division
18 shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and
19 (2) of subdivision (a).

20 "(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good
21 moral character or any similar ground relating to an applicant's character, reputation, personality,
22 or habits."

23 6. Section 480 provides in part:

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

26 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
27 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
28 board is permitted to take following the establishment of a conviction may be taken when the

1 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
2 an order granting probation is made suspending the imposition of sentence, irrespective of a
3 subsequent order under the provisions of Section 1203.4 of the Penal Code.

4 "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
5 benefit himself or herself or another, or substantially injure another.

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

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

11 7. Section 4301 provides in part:

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

15

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

19

20 "(l) The conviction of a crime substantially related to the qualifications, functions, and
21 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
22 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
23 substances or of a violation of the statutes of this state regulating controlled substances or
24 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
25 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
26 The board may inquire into the circumstances surrounding the commission of the crime, in order
27 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
28 or dangerous drugs, to determine if the conviction is of an offense substantially related to the

1 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
2 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
3 of this provision. The board may take action when the time for appeal has elapsed, or the
4 judgment of conviction has been affirmed on appeal or when an order granting probation is made
5 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
6 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
7 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
8 indictment.

9

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

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

15 **REGULATORY PROVISIONS**

16 8. California Code of Regulations, title 16, section 1770, provides, in pertinent part:

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

23 **FIRST CAUSE FOR DENIAL OF APPLICATION**

24 **(Criminal Conviction of a Substantially Related Crime)**

25 9. Respondent's application is subject to denial under sections 480, subdivision (a)(1),
26 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770,
27 in that Respondent was convicted of a crime that is substantially related to the qualifications,
28 duties and functions of a licensed pharmacy technician as follows:

1 a. On or about August 17, 2009, after pleading *guilty*, Respondent was convicted of one
2 misdemeanor count of violating Penal Code section 466 [possession of burglary tools]; one
3 misdemeanor count of violating Penal Code section 459-460, subdivision (b) [second degree
4 commercial burglary]; and one misdemeanor count of violating Penal Code section 487,
5 subdivision (a) [grand theft], in the criminal proceedings entitled *The People of the State of*
6 *California v. Samuel Aguilar Jr.* (Super. Ct. Orange County, 2009, No. 09WM06946). The Court
7 sentenced Respondent to serve 30 days in Jail, placed him on probation for a period of 3 years,
8 and fined him. The circumstances surrounding the conviction are that on or about August 13,
9 2009, the Westminster Mall Police substation was informed that Respondent was observed
10 stealing a bunch of stuff. The security officer ran after Respondent, and stopped him. During the
11 investigation, the mall security recovered from a trash can just outside of the department store a
12 hat and shirt that Respondent was wearing during the initial chase, and two large brown bags
13 inside the mall near the substation that were dropped by Respondent during the chase.
14 Respondent, admitted to wearing the hat and shirt during the chase. The officer asked to see
15 Respondent's cell phone, and found several text messages referencing thefts from different stores
16 in the mall. Respondent admitted to stealing the contents in the two large brown bags.
17 Respondent was subsequently convicted of violating Penal Code sections 466 [possession of
18 burglary tools], 459-460 [second degree commercial burglary], and 487, subdivision (a) [grand
19 theft].

20 **SECOND CAUSE FOR DENIAL OF APPLICATION**

21 **(Dishonest Acts)**

22 10. Respondent's application is subject to denial under sections 475, subdivision (a)(3),
23 480, subdivision (a)(2), and 4301, subdivision (f), in that Respondent committed a dishonest act
24 and was convicted of a crime involving a dishonest act. Complainant's allegations as set forth in
25 paragraph 10, subparagraph (a), are incorporated by reference as though set forth fully.

26 **THIRD CAUSE FOR DENIAL OF APPLICATION**

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

28 11. Respondent's application is subject to denial under sections 4301, subdivision (p) and

1 475, subdivision (a)(4), 480, subdivisions (a)(3)(A) and (a)(3)(B), in that Respondent committed
2 an act which if done by a licentiate of the business and profession in question, would be grounds
3 for suspension or revocation of his license as follows:

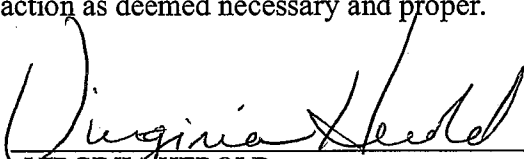
4 a. Respondent was convicted of a crime substantially related to the qualifications,
5 functions, or duties of a pharmacy technician which is a substantial degree evidence his present or
6 potential unfitness to perform the functions authorized by his license in a manner consistent with
7 the public health, safety, or welfare, in violation of section 4301, subdivision (I), and 490, in
8 conjunction with California Code of Regulations, title 16, section 1770. Complainant's
9 allegations as set forth in paragraph 10, subparagraph (a), are incorporated by reference as though
10 set forth fully.

11
12 **PRAYER**

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Board of Pharmacy issue a decision:

- 15 1. Denying the application of Samuel Aguilar as a Pharmacy Technician; and
16 2. Taking such other and further action as deemed necessary and proper.

17
18 DATED: 3/24/12


19 VIRGINIA HEROLD
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant

22 LA2011601211
23 statement of issues.rtf
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