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8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
Against:  
12 **ROBERT MICHAEL MAGDALENO**  
13 **20 East Willow Street**  
14 **Stockton, CA 95202**  
15 Respondent.

Case No. 4178

**STATEMENT OF ISSUES**

17 Complainant alleges:

18 PARTIES

- 19 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official  
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
21 2. On or about December 15, 2010, the Board of Pharmacy, Department of Consumer  
22 Affairs received an application for a Pharmacy Technician License from Robert Michael  
23 Magdaleno (Respondent). On or about December 15, 2010, Respondent certified under penalty  
24 of perjury to the truthfulness of all statements, answers, and representations in the application.  
25 The Board denied the application on July 12, 2011.

26 JURISDICTION

- 27 3. This Statement of Issues is brought before the Board of Pharmacy (Board),  
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code ("Code") unless otherwise indicated.

2 4. Section 4301 of the Code states, in pertinent part, that:

3 "The board shall take action against any holder of a license who is guilty of unprofessional  
4 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

5 Unprofessional conduct shall include, but is not limited to, any of the following:

6 ...

7 (k) The conviction of more than one misdemeanor or any felony involving the use,  
8 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any  
9 combination of those substances.

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

27 ...

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

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...”.

5. Code section 480 provides, in pertinent part, that a board may deny a license if the applicant has been convicted of a crime substantially related to the qualifications, functions or duties of the business or profession for which application is made, has committed any act involving dishonesty, fraud or deceit, has committed any act which if done by a licentiate would be grounds for suspension or revocation of a license, or has knowingly made a false statement of fact required to be revealed in the application.

6. Code section 490 provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. 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.'"

CAUSE FOR DENIAL OF APPLICATION  
(Criminal Convictions)

8. Respondent's application is subject to denial under Code sections 480, sub-part (a)(1), 490, sub-part (a), and sub-parts (k), (l) and (p) of Code section 4301 in that he suffered the criminal convictions described below.

(a) On or about August 9, 2004, in a criminal proceeding entitled *People v. Robert Michael Magdaleno*, San Joaquin County Superior Court, Case No. 07769SR, Respondent was

1 convicted by his plea of nolo contendere to violation of Vehicle Code section 23152(b) a  
2 misdemeanor. The circumstances are that on or about June 17, 2004, Respondent operated a  
3 motor vehicle under the influence of alcohol and having a blood alcohol level of 12% and .15%.

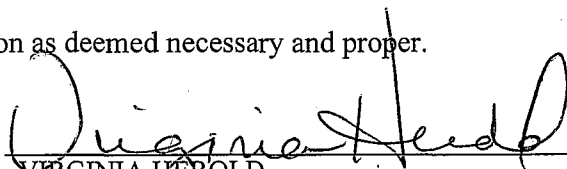
4 (b) On or about January 3, 2006, in a criminal proceeding entitled *People v. Robert*  
5 *Michael Magdaleno*, San Joaquin County Superior Court Case No. SP05-65542, Respondent was  
6 convicted by his plea of guilty to violation of Vehicle Code sections 23152(b) and Vehicle Code  
7 section 23540 (a prior conviction for violation of Vehicle Code section 23152(b) within ten  
8 years), a misdemeanor, and to violation of Vehicle Code section 1406.2(A) (driving under a  
9 suspended or revoked driving license), a misdemeanor. The circumstances are that on or about  
10 December 2, 2005, Respondent operated a motor vehicle under the influence of alcohol and  
11 having a blood alcohol level of .16%.

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 Respondent Robert Michael Magdaleno for a Pharmacy  
16 Technician License;
- 17 2. Taking such other and further action as deemed necessary and proper.

18 DATED: February 22, 2012

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

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