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	8		RE THE PHARMACY		
	9	DEPARTMENT OF CONSUMER AFFAIRS			
	10	In the Matter of the Statement of Issues	Case No. 4194		
	11	Against:			
	12	JEFFREY RODRIGUEZ CONCEPCION 1040 Commercial St.	STATEMENT OF ISSUES		
	13	Suite 110-111 San Jose, CA 95112			
·.	14				
	15	1812 Golden Hill Drive Milpitas CA 95035			
	16	Designated Representative License			
	17	Applicant.			
	18				
	19	Complainant alleges:			
	.20				
	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 April 29, 2011, the Board of Pharmacy, Department of Consumer Affairs			
	24	received an application for a Designated Represe			
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	26	perjury to the truthfulness of all statements, answers, and representations in the application. The			
	-27	Board denied the application on August 22, 2011	•		
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			STATEMENT OF ISSUES		

1	JURISDICTION	
2	3. This Statement of Issues is brought before the Board of Pharmacy (Board),	
3	Department of Consumer Affairs, under the authority of the following laws. All section	
4	references are to the Business and Professions Code unless otherwise indicated.	
5	4. Section 4300 of the Code states, in pertinent part:	
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7	"(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The	
8	board may, in its sole discretion, issue a probationary license to any applicant for a license who is	
9	guilty of unprofessional conduct and who has met all other requirements for licensure. The board	
10	may issue the license subject to any terms or conditions not contrary to public policy, including,	
11	but not limited to, the following:	
12	"(1) Medical or psychiatric evaluation.	
13	"(2) Continuing medical or psychiatric treatment.	
14	"(3) Restriction of type or circumstances of practice.	
15	"(4) Continuing participation in a board-approved rehabilitation program.	
16	"(5) Abstention from the use of alcohol or drugs.	
17	"(6) Random fluid testing for alcohol or drugs.	
18	"(7) Compliance with laws and regulations governing the practice of pharmacy.	
19		
20	5. Section 4301 of the Code states:	
21	"The board shall take action against any holder of a license who is guilty of unprofessional	
22	conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.	
23	Unprofessional conduct shall include, but is not limited to, any of the following:	
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25	"(g) Knowingly making or signing any certificate or other document that falsely represents	
26	the existence or nonexistence of a state of facts."	
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	STATEMENT OF ISSUES	

"(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

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

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

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"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the 1 violation of or conspiring to violate any provision or term of this chapter or of the applicable 2 federal and state laws and regulations governing pharmacy, including regulations established by 3 the board or by any other state or federal regulatory agency. 4

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

"(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the 6 board.

6. Section 480 of the Business and Professions Code provides, in pertinent part, that a 9 board may deny a license if the applicant has been convicted of a crime substantially related to 10 the qualifications, functions or duties of the business or profession for which application is made, 11 has committed any act involving dishonesty, fraud or deceit, has committed any act which if done 12 by a licentiate would be grounds for suspension or revocation of a license, or has knowingly made 13 a false statement of fact required to be revealed in the application. 14

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7. Section 4021 of the Code states:

16 "Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code." 17

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8. Section 4022 of the Code states

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"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in 19 humans or animals, and includes the following: 20

"(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without 21 prescription," "Rx only," or words of similar import. 22

"(b) Any device that bears the statement: "Caution: federal law restricts this device to sale 23 by or on the order of a ," "Rx only," or words of similar import, the blank to be filled 24 in with the designation of the practitioner licensed to use or order use of the device. 25

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on 26 prescription or furnished pursuant to Section 4006." 27

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

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1	"For the purpose of denial, suspension, or revocation of a personal or facility license			
2	pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a			
3	crime or act shall be considered substantially related to the qualifications, functions or duties of a			
4	licensee or registrant if to a substantial degree it evidences present or potential unfitness of a			
5	licensee or registrant to perform the functions authorized by his license or registration in a manner			
6	consistent with the public health, safety, or welfare."			
7	DRUGS			
8	10. Methamphetamine is a Schedule II controlled substance as designated by Health and			
9	Safety Code section 11055(d)(2) and a dangerous drug as designated by Business and Professions			
10	Code section 4022. It is a stimulant drug.			
11	FIRST CAUSE FOR DENIAL OF APPLICATION			
12	(CRIMINAL CONVICTIONS)			
13	11. Applicant is subject to disciplinary action under sections 4300(c), 4301(j), 4301(l),			
14	4301(o), 4301(p), and/or 480 in that on or about August 6, 1999, in a criminal proceeding entitled			
15	The People of the State of California v. Jeffrey Rodriguez Concepcion in Santa Clara Superior			
16	Court, Case Number C9927036, Applicant was convicted of violating Vehicle Code section			
17	2800.2(a) (evading police), a felony, and Vehicle Code 10851(a) (taking vehicle without owner's			
18	consent), a misdemeanor. Applicant was sentenced to serve 60 days in jail, probation for three			
19	years, and fined. The circumstances of the conviction are that Applicant took his step-father's			
20	vehicle without permission, and fled from police for 45 minutes.			
21	12. Applicant is further subject to disciplinary action under sections 4300(c), 4301(j),			
22	4301(l), 4301(o), 4301(p), and/or 480 in that on or about August 19, 1999, in a criminal			
23	proceeding entitled The People of the State of California v. Jeffrey Rodriguez Concepcion in			
24	Santa Clara Superior Court, Case Number E9911205, Applicant was convicted of violating Penal			
25	Code section 148(a)(1) (obstructing police officer), a misdemeanor, and Vehicle Code 2800.2(a)			
26	(evading police), a misdemeanor. Applicant was sentenced to serve probation for three years, and			
27	fined.			
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STATEMENT OF ISSUES

1	SECOND CAUSE FOR DENIAL OF APPLICATION		
2	(USE OF METHAMPHETAMINE)		
3	13. Applicant is subject to disciplinary action under sections 4300(c), 4301(h), 4301(j),		
4	4301(0), and/or 4301(p), in that in 2004, Applicant was arrested when, after a traffic stop, he was		
5	noted to be under the influence of methamphetamine.		
-6	THIRD CAUSE FOR DENIAL OF APPLICATION		
7	(FALSE STATEMENT ON APPLICATION)		
8	14. Applicant is subject to disciplinary action under sections 4300(c), 4301(g), 4301(j),		
9	4301(0), 4301(p), and/or 4301(q), in that he made a false statement on his application. The		
10	circumstances are that on or about March 28, 2011, Applicant signed an Application for		
11	Designated Representative License immediately below a certification under penalty of perjury as		
12	to the truthfulness and accuracy of all answers given. The application was received by the Board		
13	on April 29, 2011. The fifth question on the second page of the application stated: "Have you		
14	ever been convicted of or pled no contest to a violation of any law of a foreign country, the		
15	United States or any state laws or local ordinances? You must include all misdemeanor and		
16	felony convictions, regardless of the age of the conviction, including those which have been set		
17	aside under Penal code sections 1000 or 1203.4. Traffic violations of \$500 or less need not be		
18	reported. If "yes," attach an explanation including the type of violation, the date,		
19	circumstances, location and the complete penalty received." Applicant checked the box		
20	indicating "No." In fact, Applicant had been convicted of criminal offenses as alleged above in		
21	paragraphs 11 and 12.		
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23	PRAYER		
24	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,		
25	and that following the hearing, the Board of Pharmacy issue a decision:		
26	1. Denying the application of Jeffrey Rodriguez Concepcion for a Designated		
27	Representative License;		
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1	STATEMENT OF ISSUES		

Taking such other and further action as deemed necessary and proper. 2. DATED: VIRGINIA HEROLD VIRCINIA HEROLD Executive Officer Board of Pharmacy Department of Consumer Affairs State of California Complainant SF2011203452 20559600.doc STATEMENT OF ISSUES