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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:

Case No. 4357

12 **ERIC MONTES**

STATEMENT OF ISSUES

13 **Pharmacy Technician Registration**
14 **Applicant**

15 Respondent.

16
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 May 23, 2011, the Board of Pharmacy, Department of Consumer Affairs
22 received an application for Pharmacy Technician Registration from Eric Montes (Respondent).

23 On or about May 19, 2011, Eric Montes certified under penalty of perjury to the truthfulness of all
24 statements, answers, and representations in the application. The Board denied the application on
25 April 2, 2012.

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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, subdivision (c) of the Code states in pertinent part:

6 "The board may refuse a license to any applicant guilty of unprofessional conduct..."

7 5. Section 4301 of the Code states in pertinent part:

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

11

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

15

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

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

1 6. Section 480 of the Code states in pertinent part:

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

4 (1) Been convicted of a crime. A conviction within the meaning of this section means
5 a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
6 board is permitted to take following the establishment of a conviction may be taken when the time
7 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an
8 order granting probation is made suspending the imposition of sentence, irrespective of a
9 subsequent order under the provisions of Section 1203.4 of the Penal Code.

10 ...

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

13 **FIRST CAUSE FOR DENIAL OF APPLICATION**

14 **(Criminal Convictions)**

15 7. Respondent's application is subject to denial for unprofessional under section 4300,
16 subdivision (c), as defined in section 4301, subdivisions (k) and (l), and 480, subdivision (a),
17 paragraph (1), in that Respondent has been convicted of four (4) misdemeanors, two (2) involving
18 the use, consumption, or self-administration of alcohol. The circumstances are as follows:

19 a. On or about November 15, 2006, in a criminal proceeding entitled *People v. Eric*
20 *Montes* in Merced County Superior Court, Case Number MM212481, Respondent was convicted
21 by plea of nolo contendere of violating Vehicle Code section 20002, subdivision (a), (vehicular
22 hit and run), a misdemeanor.

23 b. On or about January 23, 2007, in a criminal proceeding entitled *People v. Eric Montes*
24 in Merced County Superior Court, Case Number MM213752, Respondent was convicted by plea
25 of nolo contendere of violating Vehicle Code section 23152, subdivision (b), (driving while under
26 the influence of alcohol with blood alcohol level greater than 0.08% by volume), a misdemeanor.

27 c. On or about January 15, 2008, , in a criminal proceeding entitled *People v. Eric*
28 *Montes* in Sacramento County Superior Court, Case Number 08T00033, Respondent was
convicted by plea of nolo contendere of violating Vehicle Code section 23152, subdivision (b),
(driving while under the influence of alcohol with blood alcohol level greater than 0.08% by

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1 volume), and Vehicle Code section 14601.2, subdivision (a), (driving while license suspended
2 due to previous DUI), misdemeanors.

3 d. On or about October 27, 2010, in a criminal proceeding entitled *People v. Eric*
4 *Montes* in Merced County Superior Court, Case Number AM219459, Respondent was convicted
5 by plea of nolo contendere of violating Vehicle Code section 14601.2, subdivision (a), (driving
6 with license suspended due to previous DUI), a misdemeanor.

7 **SECOND CAUSE FOR DENIAL OF APPLICATION**

8 **(Use of Alcohol to an Extent or in a Manner Dangerous to Self or Others)**

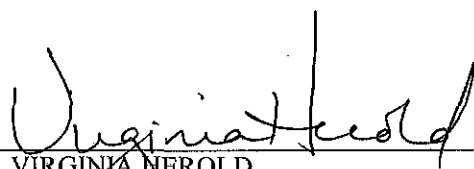
9 8. Respondent's application is subject to denial under section 480, subdivision (a),
10 paragraph (3), for committing acts which if done by a licensee would subject him to discipline as
11 defined by section 4301, subdivision (h), unprofessional conduct, in that Respondent used alcohol
12 to an extent or in a manner dangerous to himself or others by driving a vehicle upon a public
13 roadway while under the influence of alcohol on two (2) occasions as described in paragraph 8,
14 subdivisions (b) and (c), above.

15 **PRAYER**

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

- 18 1. Denying the application of Eric Montes for a Pharmacy Technician Registration;
19 2. Taking such other and further action as deemed necessary and proper.

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21
22 DATED: 2/14/14


23 VIRGINIA NEROLD
24 Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 Complainant

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