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

11 In the Matter of the Statement of Issues Against:

Case No. 4371

12 **ERIK OMAR ELOISA**

**STATEMENT OF ISSUES**

13 **Designated Representative Applicant.**

14  
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 September 26, 2011, the Board of Pharmacy, Department of Consumer  
22 Affairs received an application for a Designated Representative License from Erik Omar Eloisa  
23 (Respondent). Respondent has also used the names Erik Eloisa Soriano, Erik Omar Eloisa  
24 Soriano, Erik Eloisa Sorianno and Eric Soriano. On or about June 21, 2012, the Board denied the  
25 application. On or about June 27, 2012, Respondent appealed the Board's denial and requested a  
26 hearing.

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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 (Code) unless otherwise indicated.

5 4 Section 4300, subdivision (c) of the Code states "The board may refuse a license to  
6 any applicant guilty of unprofessional conduct."

7 **STATUTORY PROVISIONS**

8 5. Section 475 of the Code states:

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

11 . . . .

12 (2) Conviction of a crime.

13 . . . .

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

16 . . . .

17 6. Section 480 of the Code states:

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

20 (1) Been convicted of a crime. A conviction within the meaning of this section  
21 means a plea or verdict of guilty or a conviction following a plea of nolo contendere.  
22 Any action that a board is permitted to take following the establishment of a  
23 conviction may be taken when the time for appeal has elapsed, or the judgment of  
24 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.

25 . . . .

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

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

3 . . . .

4 7. Section 482 of the Code states:

5 Each board under the provisions of this code shall develop criteria to evaluate  
6 the rehabilitation of a person when:

7 (a) Considering the denial of a license by the board under Section 480; or

8 (b) Considering suspension or revocation of a license under Section 490.

9 Each board shall take into account all competent evidence of rehabilitation  
10 furnished by the applicant or licensee.

11 8. Section 493 of the Code states:

12 Notwithstanding any other provision of law, in a proceeding conducted by a  
13 board within the department pursuant to law to deny an application for a license or to  
14 suspend or revoke a license or otherwise take disciplinary action against a person who  
15 holds a license, upon the ground that the applicant or the licensee has been convicted  
16 of a crime substantially related to the qualifications, functions, and duties of the  
17 licensee in question, the record of conviction of the crime shall be conclusive  
18 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.

19 As used in this section, "license" includes "certificate," "permit," "authority,"  
20 and "registration."

21 9. Section 4301 of the Code states:

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

25 . . . .

26 (h) The administering to oneself, of any controlled substance, or the use of any  
27 dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
28 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.

1                   . . . .  
2                   (k) The conviction of more than one misdemeanor or any felony involving the  
3 use, consumption, or self-administration of any dangerous drug or alcoholic beverage,  
4 or any combination of those substances.

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

24                   . . . .  
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**REGULATORY PROVISIONS**

10. California Code of Regulations, title 16, section 1769 states:

(a) When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

1 (5) Evidence, if any, of rehabilitation submitted by the applicant.  
2

3 11. California Code of Regulations, title 16, section 1770 states:  
4

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

12 **FIRST CAUSE FOR DENIAL OF APPLICATION**

13 **(April 27, 2008 Criminal Conviction for DUI and for Driving with Blood Alcohol  
14 Content of 0.08% or Higher [0.14%] on January 20, 2008)**

15 12. Respondent's application for a designated representative license is subject to denial  
16 under sections 480, subdivision (a)(1) and 4301(l) of the Code in that Respondent was convicted  
17 of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy  
18 designated representative. The circumstances are as follows:

19 13. On or about April 27, 2008, in a criminal proceeding entitled *State of California v.*  
20 *Erik Eloisa Soriano, aka Erik Omar Eloisa, aka Eric Soriano*, in the Riverside County Superior  
21 Court, Case Number RIM511107, Respondent was convicted on his plea of guilty to violating  
22 Vehicle Code sections 23152(a) (DUI) and 23152(b) (driving with blood alcohol content of  
23 0.08% or higher [0.13%-0.14%]), misdemeanors, with an admitted enhancement allegation  
24 pursuant to Vehicle Code section 23578 for driving with a blood alcohol content of 0.15% or  
25 more by weight.

26 14. As a result of the conviction, the Court placed Respondent on 36 months summary  
27 probation and ordered him to obey all laws, ordinances and court orders, be committed to the  
28 custody of the Riverside County Sheriff for six days, pay a \$1,488 fine, not drive with alcohol in  
his blood or within six hours of consuming alcohol, not drive unless properly licensed nor within  
six hours of consuming alcohol, not drive unless properly licensed nor without insurance or valid  
registration, attend and satisfactorily complete a First Offender DUI Program for four months,

1 and submit to chemical tests of blood, saliva, breath, or urine or any reasonable physical test upon  
2 request of any probation or law enforcement officer.

3 15. The facts and circumstances that led to the conviction are that on or about January 20,  
4 2008, at approximately 8:15 p.m., Riverside Sheriff's Office Deputies, while traveling eastbound  
5 on Cajalco Road approaching Clark Street in Riverside, California, observed a black Toyota  
6 Camry make a sharp left turn where the driver nearly lost control of the vehicle and drove into the  
7 opposing lane. Deputies initiated an enforcement stop and observed the vehicle swerve left  
8 across traffic lanes and the shoulder of the road several times, and was observed to be having  
9 difficulty maintaining a constant speed. The driver of the vehicle failed to react to the overhead  
10 emergency lights for more than one mile and eventually yielded to the right shoulder. When  
11 deputies approached the driver (Respondent), they noticed Respondent and his driver were  
12 extremely intoxicated and observed several open cans of beer in the vehicle. While speaking with  
13 Respondent, deputies noticed his speech was slurred and that his eyes were extremely red and  
14 watery. Respondent had a hard time exiting his vehicle and his gait was unsteady. Deputies  
15 smelled a strong odor of an alcoholic beverage emitting from Respondent's breath and person and  
16 Respondent admitted to having drunk a few beers at his friend's house. Officers observed  
17 Respondent swayed in a random circular motion while standing on a relatively level surface.  
18 Deputies performed a field sobriety test on Respondent and he failed the tests. Respondent was  
19 placed under arrest for DUI and he chose a breath test. Respondent was transported to the  
20 Riverside County Jail where he provided breath samples which registered a blood alcohol content  
21 of 0.14% and 0.13%.

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1                                   **SECOND CAUSE FOR DENIAL OF APPLICATION**

2                                   **(January 21, 2011 Criminal Conviction for DUI and for Driving With**  
3                                   **Blood Alcohol Content of 0.08% or More [0.18%] on September 4, 2010)**

4           16. Respondent's application for a designated representative license is subject to denial  
5 under section 480, subdivision (a)(1) and 4301(l) of the Code in that Respondent was convicted  
6 of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy  
7 designated representative. The circumstances are as follows:

8           17. On or about January 21, 2011, in a criminal proceeding entitled *State of California v.*  
9 *Erik Eloisa Soriano*, aka Erik Omar Eloisa Soriano, Erik Eloisa Sorianno, Eric Soriano, in the  
10 Orange County Superior Court, Case Number 10CM10624, Respondent was convicted on his plea  
11 of guilty of violating Vehicle Code sections 23152(a) (DUI) and 23152(b) (driving with blood  
12 alcohol content of 0.08% or more [0.18%]), misdemeanors, with an admitted enhancement  
13 allegation pursuant to Vehicle Code section 23578 of driving with a blood alcohol level of 0.15%  
14 or more by weight.

15           18. As a result of the conviction, the Court ordered that Respondent serve 270 days in the  
16 Orange County Jail, stayed pending completion of DUI Court, and placed Respondent on five (5)  
17 years formal probation. The Court also ordered, among other things, that Respondent obey all  
18 laws, rules of the Court, Probation Department and DUI Court, not drive with a measurable  
19 amount of alcohol in his blood system, submit to chemical test on demand of any peace officer,  
20 consume no alcoholic beverages and not be present in any establishment where the primary items  
21 for sale are alcoholic beverages. The Court further ordered that Respondent not drive without a  
22 valid California driver's license, not own, use or possess weapons, submit to search and seizure,  
23 use true name and date of birth at all times, seek training, schooling, and employment and  
24 maintain residence as approved by the Probation Department, not associate with anyone  
25 disapproved of by his probation officer, pay various fees and fines, attend and complete a  
26 MADD Victim's Impact Panel, attend and complete an 18-month Multiple Offender Alcohol  
27 Program, and comply with the DUI Court Plea Agreement and the Orange County Probation  
28

1 Department. On June 10, 2011, a hearing was held where the Court ordered the 270 days Jail  
2 imposed on January 21, 2011 be vacated, ordered Respondent to serve 4 days in the county jail,  
3 and the Court permanently stayed the remaining 266 days. The Court also vacated the order  
4 regarding search and seizure and the order of not owning, using, or possessing any type of  
5 dangerous drugs or deadly weapons.

6 **THIRD CAUSE FOR DENIAL OF APPLICATION**

7 **(Use of Alcohol in a Manner Dangerous or Injurious to Self or the Public)**

8 19. Respondent's application is subject to denial under section 4301(h) of the Code in that  
9 on or about January 20, 2008 and September 4, 2010, Respondent used alcohol in a manner  
10 dangerous or injurious to himself or to the public, as is more fully detailed at paragraphs 12-18,  
11 above, which are incorporated here by reference.

12 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

13 **(Multiple Convictions Involving the Use of Alcoholic Beverages)**

14 20. Respondent has subjected his license to disciplinary action under section 4301,  
15 subdivision (k) of the Code in that on or about April 27, 2008 and January 21, 2011, Respondent  
16 was convicted in two separate cases on charges involving the consumption of alcoholic  
17 beverages, as detailed in paragraphs 12 through 18, above, which are incorporated here by  
18 reference.

19 **FIFTH CAUSE FOR DISCIPLINE**

20 **(Commission of Acts Which if Done by a Licensee Would be Grounds for  
21 Suspension or Revocation of License)**

22 21. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)  
23 of the Code in that he committed acts, that if done by a designated representative would be  
24 grounds for suspension or revocation of the license. The circumstances are as follows:

25 22. On or about April 27, 2008 and January 21, 2011, as detailed in paragraphs 12  
26 through 18, which are incorporated here by reference, Respondent was convicted of alcohol-  
27 related crimes which are substantially related to the qualifications, functions, and duties of a  
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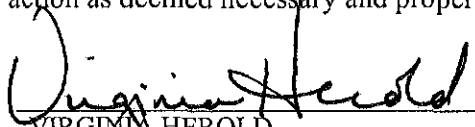
1 licensed designated representative, which would be grounds for discipline under section 4301,  
2 subdivision (l) of the Code.

3 **PRAYER**

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

- 6 1. Denying the application of Erik Omar Eloisa for a Pharmacy Designated  
7 Representative License;  
8 2. Taking such other and further action as deemed necessary and proper.

9 DATED: 11/19/12

  
10 VIRGINIA HEROLD  
11 Executive Officer  
12 Board of Pharmacy  
13 Department of Consumer Affairs  
14 State of California  
15 *Complainant*

14 SD2012703898