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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. 4381

12 **MIKE BRYAN MEDINA**

STATEMENT OF ISSUES

13
14 Applicant for Pharmacy Technician
15 Registration

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about May 20, 2011, the Board received an application for registration as a
24 Pharmacy Technician from Mike Bryan Medina (Respondent). On or about May 18, 2011,
25 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and
26 representations in the application. The Board denied the application on May 17, 2012.

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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 **STATUTORY PROVISIONS**

6 4. Section 480 states, in pertinent part:

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

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

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

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

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

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23 5. Section 490 states, in pertinent part:

24 "(a) In addition to any other action that a board is permitted to take against a licensee, a
25 board may suspend or revoke a license on the ground that the licensee has been convicted of a
26 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
27 or profession for which the license was issued.

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1 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
2 discipline a licensee for conviction of a crime that is independent of the authority granted under
3 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
4 of the business or profession for which the licensee's license was issued.

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

11 6. Section 4060 states:

12 "No person shall possess any controlled substance, except that furnished to a person upon
13 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
14 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
15 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
16 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
17 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
18 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
19 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
20 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
21 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
22 labeled with the name and address of the supplier or producer.

23 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
24 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs
25 and devices."

26 7. Section 4300 states, in pertinent part:

27 "That every license issued by the Boards is subject to discipline, including suspension or
28 revocation."

1 8. Section 4301 states, in pertinent part:

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

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

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

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

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

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

REGULATORY PROVISIONS

9. California Code of Regulations, title, 21, section 1308.13, states:

....

"(e) Narcotic Drugs. Unless specifically excepted or unless listed in another schedule:

(1) Any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below: . . ."

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

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

DRUG STATUTES

11. Health and Safety Code section 11056, subdivision (e), states, in pertinent part:

"Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities. . . ."

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1 court proceeding entitled *The People of the State of California v. Mike Bryan Medina* (Super. Ct.
2 Los Angeles County, 2010, No. KA091954). The court dismissed the charges. A review of
3 Respondent's CURES report from January 01, 2009 to May 01, 2012, while employed as a
4 Pharmacy Technician at Better Value Pharmacy, revealed that Respondent was dishonest and did
5 not have a prescription for the hydrocodone/apap 10/325 mg tablets that were discovered in his
6 possession.

7 **THIRD CAUSE FOR DENIAL OF APPLICATION**

8 **(Acts Involving Dishonesty, Fraud, or Deceit)**

9 15. Respondent's application is subject to denial under sections 480, subdivision (a)(2),
10 and 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent
11 committed dishonest acts, fraud, or deceit with the intent to substantially benefit himself, or
12 substantially injure another. Complainant refers to, and by this reference incorporates, the
13 allegations set forth above in paragraph 14, subparagraph (a), as though set forth fully.

14 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

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

16 16. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
17 and (a)(3)(B) and 4301, subdivision (p), in that Respondent committed acts which if done by a
18 licentiate would be grounds for suspension or revocation of his license, as follows:

19 a. Respondent's was convicted of a crime substantially related to the qualifications,
20 functions, or duties of a pharmacy technician which to a substantial degree evidence his present
21 or potential unfitness to perform the functions authorized by his license in a manner consistent
22 with the public health, safety, or welfare, in violation of sections 4301, subdivision (l) and 490, in
23 conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,
24 and by this reference incorporates, the allegations set forth above in paragraph 13, subparagraph
25 (a), as though set forth fully.

26 b. On or about July 02, 2010, Respondent was in possession of a controlled substance
27 without a valid prescription, in violation of sections 4060, 4300, and 4301, subdivision (j), in
28 conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,

1 and by this reference incorporates, the allegations set forth above in paragraph 14, subparagraph
2 (a), as though set forth fully.

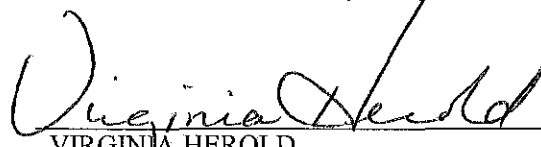
3 d. Respondent committed dishonest acts, fraudulent, or deceitful acts, with the intent to
4 substantially benefit himself, or substantially injure another, in violation of section 480,
5 subdivision (a)(2). Complainant refers to, and by this reference incorporates, the allegations set
6 forth above in paragraph 14, subparagraph (a), as though set forth fully.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board issue a decision:

- 10 1. Denying the application of Mike Bryan Medina for registration as a Pharmacy
11 Technician; and
12 2. Taking such other and further action as deemed necessary and proper.

13
14 DATED: 1/17/13



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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