

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 ADRIAN R. CONTRERAS  
Deputy Attorney General  
4 State Bar No. 267200  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2634  
7 Facsimile: (619) 645-2061  
E-mail: Adrian.Contreras@doj.ca.gov  
8 *Attorneys for Complainant*

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

12 In the Matter of the Statement of Issues  
Against:

Case No. 4382

13 **TIFFANY PASCUAL LOPACINSKI**

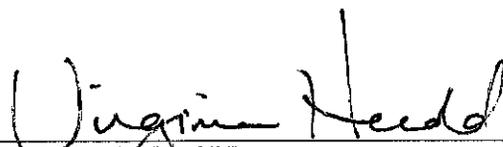
OAH No. 2014040608

14 Respondent.

15 **NOTICE OF WITHDRAWAL OF**  
**STATEMENT OF ISSUES**

16 On June 12, 2014, Tiffany Pascual Lopacinski (Respondent) withdrew her appeal and  
17 request for a hearing on the denial of her application for registration as a pharmacy technician by  
18 the Board of Pharmacy. Accordingly, Statement of Issues No. 4382 filed against Respondent is  
19 withdrawn without prejudice and the denial of her application is affirmed. The earliest date on  
20 which Respondent may reapply for a pharmacy technician registration is June 13, 2015, which is  
21 one year after the date of her withdrawal.

22 DATED: 6/19/14

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

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1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 ADRIAN R. CONTRERAS  
Deputy Attorney General  
4 State Bar No. 267200  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2634  
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9 **BEFORE THE**  
10 **BOARD OF PHARMACY**  
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11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues  
Against:

Case No. 4382

**STATEMENT OF ISSUES**

14 **TIFFANY PASCUAL LOPACINSKI**

15 Respondent.

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 February 28, 2012, the Board of Pharmacy, Department of Consumer  
22 Affairs received an application for a Pharmacy Technician Registration from Tiffany Pascual  
23 Lopacinski (Respondent). On or about February 24, 2012, Respondent certified under penalty of  
24 perjury to the truthfulness of all statements, answers, and representations in the application. The  
25 Board denied the application on June 4, 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 of the Code states:

6 "...

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 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5  
21 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board  
22 shall have all the powers granted therein. The action shall be final, except that the propriety of  
23 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of  
24 Civil Procedure."

25 ///

26 ///

27 ///

28 ///



1 subsequent order under the provisions of Section 1203.4 of the Penal Code. "(2) Done any act  
2 involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or  
3 another, or substantially injure another.

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

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

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

11 "...

12 "(c) A board may deny a license regulated by this code on the ground that the applicant  
13 knowingly made a false statement of fact required to be revealed in the application for the  
14 license."

15 8. Section 482 of the Code states:

16 "Each board under the provisions of this code shall develop criteria to evaluate the  
17 rehabilitation of a person when:

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

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

20 "Each board shall take into account all competent evidence of rehabilitation furnished by  
21 the applicant or licensee."

22 9. Section 493 of the Code states:

23 "Notwithstanding any other provision of law, in a proceeding conducted by a board within  
24 the department pursuant to law to deny an application for a license or to suspend or revoke a  
25 license or otherwise take disciplinary action against a person who holds a license, upon the  
26 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
27 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
28 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of the crime in  
2 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
3 qualifications, functions, and duties of the licensee in question.

4 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
5 'registration.'"

6 10. Section 4032 of the Code states:

7 "'License' means and includes any license, permit, registration, certificate, or exemption  
8 issued by the board and includes the process of applying for and renewing the same."

9 11. Section 4038 of the Code states:

10 "(a) 'Pharmacy technician' means an individual who assists a pharmacist in a pharmacy in  
11 the performance of his or her pharmacy related duties, as specified in Section 4115.

12 "..."

13 12. Section 4115 of the Code states:

14 "(a) A pharmacy technician may perform packaging, manipulative, repetitive, or other  
15 nondiscretionary tasks, only while assisting, and while under the direct supervision and control of  
16 a pharmacist.

17 "(b) This section does not authorize the performance of any tasks specified in subdivision  
18 (a) by a pharmacy technician without a pharmacist on duty.

19 "(c) This section does not authorize a pharmacy technician to perform any act requiring the  
20 exercise of professional judgment by a pharmacist.

21 "(d) The board shall adopt regulations to specify tasks pursuant to subdivision (a) that a  
22 pharmacy technician may perform under the supervision of a pharmacist. Any pharmacy that  
23 employs a pharmacy technician shall do so in conformity with the regulations adopted by the  
24 board.

25 "(e) No person shall act as a pharmacy technician without first being licensed by the board  
26 as a pharmacy technician.

27 "..."

28 ///

1           13. Section 4202 of the Code states:

2           “(a) The board may issue a pharmacy technician license to an individual if he or she is a  
3 high school graduate or possesses a general educational development certificate equivalent, and  
4 meets any one of the following requirements:

5           ‘(1) Has obtained an associate's degree in pharmacy technology.

6           “(2) Has completed a course of training specified by the board.

7           “(3) Has graduated from a school of pharmacy recognized by the board.

8           “(4) Is certified by the Pharmacy Technician Certification Board.

9           “(b) The board shall adopt regulations pursuant to this section for the licensure of pharmacy  
10 technicians and for the specification of training courses as set out in paragraph (2) of subdivision  
11 (a). Proof of the qualifications of any applicant for licensure as a pharmacy technician shall be  
12 made to the satisfaction of the board and shall be substantiated by any evidence required by the  
13 board.

14           “(c) The board shall conduct a criminal background check of the applicant to determine if  
15 an applicant has committed acts that would constitute grounds for denial of licensure, pursuant to  
16 this chapter or Chapter 2 (commencing with Section 480) of Division 1.5.

17           “...”

18           14. Section 4301 of the Code states:

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

22           “... ”

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

26           “... ”

27           “(l) The conviction of a crime substantially related to the qualifications, functions, and  
28 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13

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

16 “... ”

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

21 "... ”

## 22 REGULATORY PROVISIONS

23 15. California Code of Regulations, title 16, section 1760, states:

24 “In reaching a decision on a disciplinary action under the Administrative Procedure Act  
25 (Government Code section 11400 et seq.) the board shall consider the disciplinary guidelines  
26 entitled “Disciplinary Guidelines” (Rev. 10/2007), which are hereby incorporated by reference.

27 “Deviation from these guidelines and orders, including the standard terms of probation, is  
28 appropriate where the board, in its sole discretion, determines that the facts of the particular case

1 warrant such a deviation-the presence of mitigating factors; the age of the case; evidentiary  
2 problems.”

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

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

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

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

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

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

15 “(5) Evidence, if any, of rehabilitation submitted by the applicant.

16 “. . . .”

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

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

24 18. California Code of Regulations, title 16, section 1793.2, states:

25 “‘Nondiscretionary tasks’ as used in Business and Professions Code section 4115, include:

26 “(a) removing the drug or drugs from stock;

27 “(b) counting, pouring, or mixing pharmaceuticals;

28 “(c) placing the product into a container;

1 “(d) affixing the label or labels to the container;

2 “(e) packaging and repackaging.”

3 **FIRST CAUSE FOR DENIAL OF APPLICATION**

4 **(False Statement of Fact on License Application)**

5 19. Respondent's application is subject to denial under section 480, subdivision (c) in that  
6 she knowingly failed to disclose a conviction on her license application when such disclosure was  
7 required. The circumstances are as follows:

8 a. On her license application, Respondent was asked, “Have you ever been  
9 convicted of any crime in any state . . . [ ] Check the box next to ‘NO’ if you have not been  
10 convicted of a crime.” In response to this question, Respondent checked the box next to “NO,”  
11 signed her application under penalty of perjury, and sent it to the Board.

12 b. In fact, on or about October 14, 1988, in a criminal proceeding entitled *People*  
13 *v. Tiffany Grace Pascual*, in Municipal Court of Citrus Judicial District, County of Los Angeles,  
14 case number 88M09129, Respondent was convicted on her plea of guilty of four counts of  
15 violating Penal Code section 470, forgery, misdemeanors. As a result of her convictions,  
16 Respondent was sentenced to three years formal probation and ordered to pay fines.

17 **SECOND CAUSE FOR DENIAL OF APPLICATION**

18 **(October 14, 1988, Criminal Convictions for Forgery on February 6, 1988)**

19 20. Respondent's application is subject to denial under Code sections 480, subdivisions  
20 (a)(1) and (a)(3)(A); 4300, subdivision (c); and 4301, subdivision (l) in that she was convicted of  
21 a crime substantially related to the qualifications, functions, and duties of a licensee. The  
22 circumstances are as follows:

23 21. On or about October 14, 1988, in a criminal proceeding entitled *People v. Tiffany*  
24 *Grace Pascual*, in Municipal Court of Citrus Judicial District, County of Los Angeles, case  
25 number 88M09129, Respondent was convicted on her plea of guilty of four counts of violating  
26 Penal Code section 470, forgery, misdemeanors.

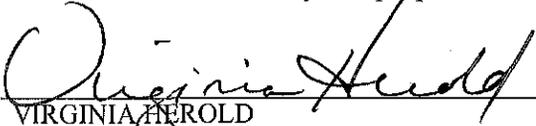
27 22. As a result of her convictions, Respondent was sentenced to three years formal  
28 probation and ordered to pay fines.



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1. Denying the application of Tiffany Pascual Lopacinski for a Pharmacy Technician Registration; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 9/6/13



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

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