

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 ANAHITA S. CRAWFORD
Deputy Attorney General
4 State Bar No. 209545
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-8311
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12 In the Matter of the Statement of Issues Against: Case No. 4486

13 **NELSON EDDIE LOYA**

14 Respondent. **STATEMENT OF ISSUES**

15 Complainant alleges:

16 **PARTIES**

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

19 2. On or about June 5, 2012, the Board of Pharmacy, Department of Consumer Affairs
20 received an application for a Pharmacy Technician from Nelson Eddie Loya (Respondent). On or
21 about June 1, 2012, Nelson Eddie Loya certified under penalty of perjury to the truthfulness of all
22 statements, answers, and representations in the application. The Board denied the application on
23 September 28, 2012.

24 **JURISDICTION**

25 3. This Statement of Issues is brought before the Board of Pharmacy (Board),
26 Department of Consumer Affairs, under the authority of the following laws. All section
27 references are to the Business and Professions Code unless otherwise indicated.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATUTORY PROVISIONS

4. Section 4300 of the Code states:

...

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

- (1) Medical or psychiatric evaluation.
- (2) Continuing medical or psychiatric treatment.
- (3) Restriction of type or circumstances of practice.
- (4) Continuing participation in a board-approved rehabilitation program.
- (5) Abstention from the use of alcohol or drugs.
- (6) Random fluid testing for alcohol or drugs.
- (7) Compliance with laws and regulations governing the practice of pharmacy.

...

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

5. Section 4301 of the Code states:

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

...

(1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the 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 to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this

1 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
2 contendere is deemed to be a conviction within the meaning of this provision. The
3 board may take action when the time for appeal has elapsed, or the judgment of
4 conviction has been affirmed on appeal or when an order granting probation is made
5 suspending the imposition of sentence, irrespective of a subsequent order under
6 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
7 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
8 dismissing the accusation, information, or indictment.

9 6. Section 480 of the Business and Professions Code provides that:

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

12 (1) Been convicted of a crime. A conviction within the meaning of this
13 section means a plea or verdict of guilty or a conviction following a plea of nolo
14 contendere. . . .

15 . . .
16 (3)(A) Done any act that if done by a licentiate of the business or profession in
17 question, would be grounds for suspension or revocation of license.

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

21 **FIRST CAUSE FOR DENIAL OF APPLICATION**

22 **(Criminal Conviction)**

23 7. Respondent's application is subject to denial for unprofessional conduct pursuant to
24 section 480 subsection (a)(1) and section 4300, subsection (c) as defined in section 4301,
25 subsection (l), as follows:

26 a. On or about March 25, 2010, in a criminal proceeding entitled the *People of the*
27 *State of California vs. Loya, Nelson E.*, County of Alameda, Case No. 421737, Respondent was
28 convicted on his plea of no contest to violating Vehicle Code section 23103.5, reckless driving
involving alcohol, a misdemeanor. The circumstances were that on or about September 6, 2009,
Officers with San Leandro Police Department were working a DUI checkpoint. Officers stopped
Respondent, who displayed objective signs of alcohol consumption. Respondent failed to
perform field sobriety tests as demonstrated and was arrested for driving under the influence. His
blood alcohol level was .08%. Respondent was not of drinking age at the time of his arrest.
Respondent possessed 25 grams of marijuana in his car and had a valid medical marijuana card.

///

1 Respondent was sentenced to 3 years' summary probation, 3 days jail, fines and to enroll in a 12
2 hour DUI program.

3 a. On or about March 12, 2010, in a criminal proceeding entitled the *People of the*
4 *State of California vs. Nelson Eddie Loya.*, County of Stanislaus, Case No. 1414297, Respondent
5 was convicted on his plea of nolo contendere to violating Vehicle Code section 23152(b), driving
6 with a blood alcohol level above .08%, a misdemeanor. The circumstances were that on or about
7 February 7, 2010, Deputies with the Stanislaus County Sheriff's Department responded to a
8 report of the sound of a vehicle collision and the sound of the vehicle leaving the scene. Upon
9 arrival at the scene, Deputies observed skid marks leading to a tree in the front yard of a
10 residence. A license plate was located at the base of the tree, which led Deputies to Respondent
11 who was in bed at his home. Deputies had Respondent perform field sobriety tests, which he was
12 unable to do. Respondent displayed objective signs of intoxication. Respondent was arrested for
13 driving under the influence and his blood alcohol level was a .13%. Respondent was sentenced to
14 7 days in jail, fine and to enroll in a DUI first offender program.

15 **SECOND CAUSE FOR DENIAL OF APPLICATION**

16 **(Acts if Done by a Licentiate)**

17 8. Respondent's application is subject to denial for unprofessional conduct under section
18 480, subsection (a)(3)(A) for violation of section 4301, subsection (l), in that if Respondent were
19 licensed, his license would be subject to discipline based on the conduct described in paragraph 7,
20 above.

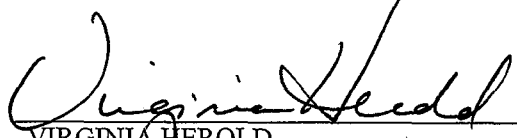
21
22
23
24
25
26 ///
27 ///
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

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

1. Denying the application of Nelson Eddie Loya for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 6/10/13 

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

SA2012108982
11058808