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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
12 Against:

Case No. 4508

13 **MELINDA CASTRO,**

STATEMENT OF ISSUES

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about May 31, 2011, the Board of Pharmacy (Board) received an application
21 for a Pharmacy Technician Registration from Melinda Castro (Respondent). On or about May
22 17, 2011, Respondent certified under penalty of perjury to the truthfulness of all statements,
23 answers, and representations in the application. The Board denied the application on September
24 13, 2012.

25 **JURISDICTION**

26 3. This Statement of Issues is brought before the Board under the authority of the
27 following laws. All section references are to the Business and Professions Code unless otherwise
28 indicated.

STATUTORY PROVISIONS

4. Section 480 states, in pertinent part:

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

"(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code.

....

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

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

"(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

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

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1 5. Section 490 states, in pertinent part:

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

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

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

16 6. Section 4300 provides, in pertinent part, that every license issued by the Board is
17 subject to discipline, including suspension or revocation.

18 7. Section 4301 states, in pertinent part:

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:

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

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1 **SECOND CAUSE FOR DENIAL OF APPLICATION**

2 **(Knowingly Made a False Statement of Fact)**

3 10. Respondent's application is subject to denial under section 480, subdivision (c), in
4 that on or about May 17, 2011, Respondent knowingly made a false statement of fact by failing to
5 disclose her 2012 conviction case against her, on her application for licensure. In addition,
6 Respondent signed under penalty of perjury, under the laws of the State of California, that the
7 forgoing was true and correct, on her application for licensure. Complainant refers to, and by this
8 reference incorporates, the allegations set forth in paragraph 9, subparagraph (b), as though set
9 forth fully.

10 **THIRD CAUSE FOR DENIAL OF APPLICATION**

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

12 11. Respondent's application is subject to denial under sections 4301, subdivision (p) and
13 480, subdivisions (a)(3)A) and (a)(3)(B), in that Respondent committed acts which if done by a
14 licentiate of the business and profession in question, would be grounds for suspension or
15 revocation of her license as follows:

16 a. Respondent was convicted of crimes substantially related to the qualifications,
17 functions, or duties of a pharmacy technician which to a substantial degree evidence her present
18 or potential unfitness to perform the functions authorized by her license in a manner consistent
19 with the public health, safety, or welfare, in violation of sections 4031, subdivision (l), and 490,
20 in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,
21 and by this reference incorporates, the allegations set forth above in paragraph 11, subparagraphs
22 (a) and (b), inclusive, as though set forth fully.

23 b. Respondent used alcoholic beverages to an extent or in a manner dangerous or
24 injurious to herself, another person, or the public, in violation of section 4301, subdivision (h).
25 Complainant refers to, and by this reference incorporates, the allegations set forth above in
26 paragraph 9, subparagraph (a), as though set forth fully.

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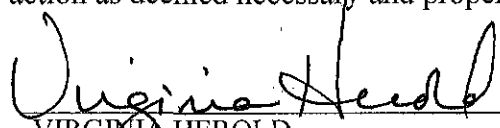
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PRAYER

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

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

DATED: 7/22/13



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

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