

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 KATHERINE MESSANA
Deputy Attorney General
4 State Bar No. 272953
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2554
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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. 4509

13 **SAMUEL STEVEN SOLORIO**

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 March 7, 2012, the Board of Pharmacy ("Board") received an application
21 for registration as a Pharmacy Technician from Samuel Steven Solorio ("Respondent"). On or
22 about March 4, 2012, Respondent certified under penalty of perjury to the truthfulness of all
23 statements, answers, and representations in the application. The Board denied the application on
24 October 26, 2012.

25 **JURISDICTION AND STATUTORY PROVISIONS**

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 ("Code") unless
28 otherwise indicated.

1 4. Section 480 states, in pertinent part:

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

4 (1) Been convicted of a crime. A conviction within the meaning of this
5 section means a plea or verdict of guilty or a conviction following a plea of nolo
6 contendere. Any action that a board is permitted to take following the establishment
7 of a conviction may be taken when the time for appeal has elapsed, or the judgment
8 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
10 the provisions of Section 1203.4 of the Penal Code.

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

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

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

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

25 5. Section 4300 provides, in pertinent part, that every license issued by the Board is
26 subject to discipline, including suspension or revocations.

27 6. Section 4301 states, in pertinent part:

28 “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:

...

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

...

(h) The administering to oneself, of any controlled substance, or the use
of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
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
3 involving the use, consumption, or self-administration of any dangerous drug or
4 alcoholic beverage, 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.

...

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

19 7. Section 490 states, in pertinent part:

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

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

(c) 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.”

1 **REGULATORY PROVISION**

2 8. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

10 **FIRST CAUSE FOR DENIAL OF APPLICATION**

11 **(Conviction of Substantially Related Crimes)**

12 9. Respondent's application is subject to denial under section 480, subdivision (a)(1) of
13 the Code in conjunction with California Code of Regulations, title 16, section 1770 in that
14 Respondent was convicted of crimes substantially related to the qualifications, functions and
15 duties of a pharmacy technician, as follows:

16 10. On or about June 30, 2005, Respondent pled nolo contendere to and was convicted of
17 one misdemeanor count of violating Vehicle Code section 23152(b) [driving while having 0.08%
18 or more, by weight, of alcohol in his blood] in the criminal proceeding entitled *The People of the*
19 *State of California v. Samuel Solorio* (Super. Ct. Los Angeles County, 2005, Case No.
20 5MT05809). The court sentenced Respondent to serve 2 days in Los Angeles County Jail and
21 placed him on probation for thirty-six (36) months, with terms and conditions. The court
22 acknowledged that the Blood Alcohol Content (“BAC”) test showed a BAC of 0.25%. The
23 circumstances underlying the conviction are that on or about June 4, 2005, Los Angeles Police
24 Department Officers (“Officers”) conducted a traffic stop on a vehicle driven by Respondent.
25 While speaking to Respondent, Officers observed Respondent to have the objective symptoms of
26 intoxication. When asked to exit the vehicle Officers observed Respondent stumbled out of the
27 car. Officers placed Respondent in handcuffs and Respondent attempted to run away from the
28 scene with the handcuffs behind his arms. During the booking procedure, Respondent submitted
to blood test that resulted in a blood-alcohol content level of 0.25%.

11. On or about July 17, 2008, Respondent pled guilty to one misdemeanor count of
violating Vehicle Code section 10851, subdivision (a) [drive vehicle without owner’s consent] in

1 the criminal proceeding entitled *The People of the State of California v. Samuel Steven Solorio*
2 (Super. Ct. Los Angeles County, 2008, Case No. GA073752). On or about January 21, 2009, the
3 court sentenced Respondent to serve 205 days in Los Angeles County Jail and placed Respondent
4 on probation for three (3) years, with terms and conditions. The circumstances underlying the
5 conviction are that on or about June 24, 2008, Respondent took a car that did not belong to him
6 without the consent of the owner.

7 12. On or about June 19, 2009, Respondent pled nolo contendere to and was convicted of
8 one misdemeanor count of violating Vehicle Code section 23152(b) [driving while having 0.08%
9 or more, by weight, of alcohol in his blood] in the criminal proceeding entitled *The People of the*
10 *State of California v. Samuel Steven Solorio* (Super. Ct. Los Angeles County, 2009, Case No.
11 9MP07203). The court sentenced Respondent to serve 45 days in Los Angeles County Jail and
12 placed him on probation for a period of sixty (60) months, with terms and conditions. The
13 circumstances underlying the conviction are that on or about June 17, 2009, during an
14 investigation of a single vehicle collision by the California Highway Patrol Department,
15 Respondent was contacted. While speaking to the Respondent, the officer detected an odor of an
16 alcoholic beverage emitting from his breath. Respondent admitted to consuming some alcoholic
17 beverages. During the booking procedure, Respondent submitted to a breath test that resulted in a
18 0.19% BAC on the first reading and 0.20% BAC on the second reading.

19 **SECOND CAUSE FOR DENIAL OF APPLICATION**

20 **(Act Involving Dishonesty, Fraud, or Deceit)**

21 13. Respondent's application is subject to denial under section 480, subdivision (a)(2) of
22 the Code, in that Respondent committed an act involving dishonesty, fraud, or deceit with the
23 intent to substantially benefit himself, or substantially injure another when he took a vehicle
24 without the owner's consent. The act is described in more particularity in paragraph 11 above,
25 inclusive and hereby incorporated by reference.

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1 THIRD CAUSE FOR DENIAL OF APPLICATION

2 **(Conduct Warranting Discipline of Licensee)**

3 14. Respondent's application is subject to denial under section 480, subdivision (a)(3) of
4 the Code, in that Respondent committed acts which if done by a licentiate of the business and
5 profession in question, would be grounds for suspension or revocation of his license, as follows:

6 15. Respondent was convicted of crimes substantially related to the qualifications,
7 functions, or duties of a pharmacy technician which to a substantial degree evidence his present
8 or potential unfitness to perform the functions authorized by his license in a manner consistent
9 with the public health, safety, or welfare, in violation of section 4031, subdivision (l) and section
10 490 of the Code in conjunction with California Code of Regulations, title 16, section 1770. The
11 convictions are described in more particularity in paragraphs 10 through 12 above, inclusive and
12 hereby incorporated by reference.

13 16. Respondent committed an act involving dishonesty, fraud or deceit in violation of
14 section 4301, subdivision (f) of the Code. The dishonest acts are described in more particularity
15 in paragraph 11 above, inclusive and hereby incorporated by reference.

16 17. Respondent used alcoholic beverages to an extent or in a manner dangerous or
17 injurious to himself, others and the public, in violation of section 4301, subdivision (h) of the
18 Code. The dangerous use is described in more particularity in paragraphs 10 and 12 above,
19 inclusive and hereby incorporated by reference.

20 18. Respondent was criminally convicted of two misdemeanors involving the use,
21 consumption and self-administration of alcoholic beverages in violation of section 4301,
22 subdivision (k) of the Code. The convictions are described in more particularity in paragraphs 10
23 and 12 above, inclusive and hereby incorporated by reference.

24 19. Respondent violated provisions of the licensing chapter in violation of section 4301,
25 subdivision (o) of the Code. The violations are described in more particularity in paragraphs 14
26 through 18 above, inclusive and hereby incorporated by reference.

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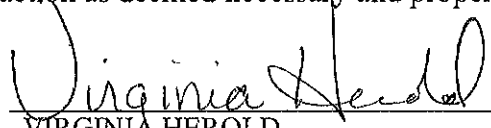
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PRAYER

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 Samuel Steven Solorio for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 2/12/13



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

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