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

11 In the Matter of the Statement of Issues
12 Against:

Case No. 4515

STATEMENT OF ISSUES

13 **CHRISTOPHER DUVAL CAPALAR**

14 **Pharmacy Technician Registration**
15 **Applicant**

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 2. On or about May 28, 2004, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 56573 to Christopher Duval Capalar (Respondent). On February 8,
24 2007, the Board filed an Accusation against Respondent, in the Matter of the Accusation against
25 Christopher Duval Capalar, case number 2998. Based upon the Accusation, Respondent admitted
26 the truth to the charges and allegations in the Accusation and surrendered his license. The Board
27 accepted his surrender effective February 13, 2008. The stipulated surrender provided that the
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1 surrender constituted the institution of discipline upon Respondent and that Respondent may not
2 reapply for a license for three years from the effective date of the decision.

3 3. On or about June 12, 2012, the Board of Pharmacy, Department of Consumer Affairs,
4 received an application for a Pharmacy Technician Registration from Respondent. In response to
5 the question on the application whether disciplinary action has been taken against your technician
6 license in this state, Respondent answered "no." On or about June 29, 2012, Respondent certified
7 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
8 application. The Board denied the application on November 7, 2012.

9 JURISDICTION

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

13 5. Section 4300 of the Code provides, in pertinent part, that the Board may refuse a
14 license to any applicant guilty of unprofessional conduct. The Board may, in its sole discretion,
15 issue a probationary license to any applicant for a license who is guilty of unprofessional conduct
16 and who has met all other requirements for licensure.

17 6. Section 475 of the Code states:

18 (a) Notwithstanding any other provisions of this code, the provisions of this
19 division shall govern the denial of licenses on the grounds of:

20 (1) Knowingly making a false statement of material fact, or knowingly
omitting to state a material fact, in an application for a license.

21 (2) Conviction of a crime.

22 (3) Commission of any act involving dishonesty, fraud or deceit with the
23 intent to substantially benefit himself or another, or substantially injure another.

24 (4) Commission of any act which, if done by a licentiate of the business or
profession in question, would be grounds for suspension or revocation of license.

25 (b) Notwithstanding any other provisions of this code, the provisions of this
26 division shall govern the suspension and revocation of licenses on grounds specified
in paragraphs (1) and (2) of subdivision (a).

27 (c) A license shall not be denied, suspended, or revoked on the grounds of a
28 lack of good moral character or any similar ground relating to an applicant's
character, reputation, personality, or habits.

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7. Section 480 of the Code states:

(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.

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

(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.

8. Section 482 of the Code states:

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

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

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

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

9. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted

1 of a crime substantially related to the qualifications, functions, and duties of the
2 licensee in question, the record of conviction of the crime shall be conclusive
3 evidence of the fact that the conviction occurred, but only of that fact, and the board
4 may inquire into the circumstances surrounding the commission of the crime in order
5 to fix the degree of discipline or to determine if the conviction is substantially related
6 to the qualifications, functions, and duties of the licensee in question.

7 As used in this section, "license" includes "certificate," "permit," "authority,"
8 and "registration."

9 10. Section 4301 of the Code states:

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

15 (a) Gross immorality.

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

20 (g) Knowingly making or signing any certificate or other document that falsely
21 represents the existence or nonexistence of a state of facts.

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

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

(k) The conviction of more than one misdemeanor or any felony involving the
use, consumption, or self-administration of any dangerous drug or alcoholic
beverage, or any combination of those substances.

(l) 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 chapter. A plea or verdict of guilty or a conviction following a plea of nolo

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

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

10 REGULATORY PROVISIONS

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

12 (a) When considering the denial of a facility or personal license under Section
13 480 of the Business and Professions Code, the board, in evaluating the rehabilitation
14 of the applicant and his present eligibility for licensing or registration, will consider
15 the following criteria:

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

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

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

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

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

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

28 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.

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FIRST CAUSE FOR DENIAL OF APPLICATION

**(May 26, 2005 Criminal Conviction - Possession of a Controlled Substance,
Driving Under the Influence of Drugs, and Under the Influence of a
Controlled Substance on March 31, 2005)**

13. Respondent's application for licensure is subject to denial under section 4300, 475, subdivisions (a)(2) and (a)(4), and 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that Respondent was convicted of a crime that is substantially related to the qualifications, duties, and functions of a Pharmacy Technician involving the administering to oneself of a controlled substance, violating state laws regarding controlled substances as well as pharmacy laws, convictions involving the use of drugs, and conduct warranting denial of a license, which would be a grounds for discipline under section 4301, subdivisions (h), (j), (k), (l) and (p) of the Code for a licensee. The circumstances are as follows:

a. On or about May 26, 2005 in the Superior Court for the County of San Diego, in a case entitled *People vs. Christopher Duval Capalar* (Sup. Ct., San Diego, 2005, Case No. CD190029), respondent pled guilty to a violation of Health and Safety Code section 11350(a), a felony and Vehicle Code Section 23152(a), a misdemeanor. The circumstances of the conviction are as follows:

b. On or about March 31, 2005, at 7:30 p.m., a police officer stopped Respondent's car for speeding and erratic driving. Before he was stopped, Respondent was driving 70 mph in a 40 mph zone and then 40 mph in a 25 mph zone, swerving in and out of lanes of traffic, and taking turns very quickly. The officer noted that Respondent was acting hyperactive, sweating profusely, and that his pupils were dilated. When the officer asked if Respondent had taken any narcotics, Respondent said no and then later admitted that he had snorted cocaine about 3 hours prior. Respondent also admitted that there was cocaine in the vehicle. A search of the car revealed a bag with a white substance in it, which the Officer later determined was a controlled substance.

c. Pursuant to a plea agreement, on or about May 26, 2005, Respondent was granted deferred judgment for 18 months pursuant to Penal Code section 1000 on the Health and

1 Safety Code violation. Respondent was placed on 5 years probation for the Vehicle Code
2 Violation. Respondent was also ordered to pay \$1,950 in fines and fees, his license was
3 suspended for 90 days, and he was ordered to complete a first conviction program.

4 d. On May 30, 2012, the conviction was set aside and dismissed pursuant to
5 Penal Code section 1203.4.

6 **SECOND CAUSE FOR DENIAL OF APPLICATION**

7 **(May 19, 2006 Criminal Conviction -Acquiring Access Card Account**
8 **Information and Unauthorized Use of Personal Identifying Information**
9 **to Obtain Credit on June 5, 2005)**

10 14. Respondent's application for licensure is subject to denial under section
11 4300, 475, subdivisions (a)(2), (a)(3), and (a)(4), and 480, subdivisions (a)(1), (a)(2), and
12 (a)(3)(A) of the Code in that Respondent was convicted of a crime that is substantially related to
13 the qualifications, duties, and functions of a pharmacist involving dishonesty, fraud, deceit, or
14 corruption, and conduct warranting denial of a license and that would be a ground for discipline
15 under section 4301, subdivisions (a), (f), and (l) of the Code for a licensed Pharmacy Technician.
16 The circumstances are as follows:

17 a. On or about May 19, 2006 in the Superior Court for the County of San
18 Diego, in a case entitled *People vs. Christopher Duval Capalar* (Sup. Ct., San Diego, 2005, Case
19 No. CD195379), respondent pled guilty to a violation of Penal Code Sections 484e(d), a felony,
20 and 530.5(a), a misdemeanor. The circumstances of the conviction are as follows:

21 b. On July 2, 2005, a San Diego Zoo employee found a portable credit card
22 skimming device next to a cash register being utilized by Respondent. When subsequently
23 questioned, Respondent admitted that he had used the devise to capture credit card account
24 numbers on several occasions and that he returned the loaded skimming device to another
25 individual who was to pay him \$10.00 per skimmed account number. An investigation revealed
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1 that fraud losses from the compromised accounts due to the skimming device's use at the Zoo
2 amounted to approximately \$7,752.52.

3 c. Pursuant to a plea agreement, on or about July 28, 2006, Respondent was
4 sentenced to 180 days in jail, three years probation, short term work furlough, fines in the amount
5 of \$439 and restitution in the amount of \$5,824.46 to CitiBank.

6 d. On May 30, 2012, the conviction was set aside and dismissed pursuant to
7 Penal Code section 1203.4.

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9 **THIRD CAUSE FOR DENIAL OF APPLICATION**

10 **(Knowingly Making a False Statement of Fact on Application for Licensure)**

11 15. Respondent's application is subject to denial under section 480, subdivision (c), in
12 that Respondent knowingly made a false statement of fact required to be revealed in the
13 application for the license. The circumstances are as follows:

14 A. On or about June 29, 2012, Respondent certified under penalty of perjury
15 to the truthfulness of all statements, answers, and representations in the application for
16 licensure to the Board.

17 B. Question No. 3 of his application asks, "Has disciplinary action ever been
18 taken against your pharmacist license, intern permit or technician license in this state or any
19 other state?" Respondent checked "No" to this question. In doing so, Respondent made a
20 false statement of fact concerning the discipline of his previous pharmacy technician
21 registration.
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23 C. On or about January 14, 2008, the Board issued a decision and order
24 adopting Respondent's surrender of his pharmacy technician license. On page 3 of the
25 stipulated surrender, item 3 of the Order provides "The surrender of Respondent's
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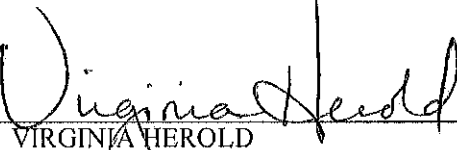
1 Pharmacy Technician Registration and the acceptance of the surrendered license by the
2 Board shall constitute the imposition of discipline against Respondent.”

3 PRAYER

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

- 6 1. Denying the application of Christopher Duval Capalar for a Pharmacy Technician
7 Registration;
8
9 2. Taking such other and further action as deemed necessary and proper.

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11 DATED: 3/1/13


12 VIRGINIA HEROLD
13 Executive Officer
14 Board of Pharmacy
15 Department of Consumer Affairs
16 State of California
17 Complainant

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