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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:
13 **RODOLFO ARROYO PINALES**
14 Pharmacy Technician Registration Applicant
15 Respondent.

Case No. 4526

STATEMENT OF ISSUES

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 (Board).

22 2. On or about April 27, 2012, the Board received an application for registration as a
23 Pharmacy Technician from Rodolfo Arroyo Pinales (Respondent). On or about April 11, 2012,
24 Rodolfo Arroyo Pinales certified under penalty of perjury to the truthfulness of all statements,
25 answers, and representations in the application. The Board denied the application on October 9,
26 2012.

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1 **JURISDICTION**

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

5 **STATUTORY PROVISIONS**

6 4. Section 480 states, in pertinent part:

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

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

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

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

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

22 5. Section 490 states, in pertinent part:

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

27 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
28 discipline a licensee for conviction of a crime that is independent of the authority granted under

1 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
2 of the business or profession for which the licensee's license was issued.

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

9 6. Section 4060 states:

10 "No person shall possess any controlled substance, except that furnished to a person upon
11 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
12 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
13 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
14 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
15 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
16 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
17 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
18 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
19 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
20 labeled with the name and address of the supplier or producer.

21 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
22 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
23 devices."

24 7. Section 4300 of states, in pertinent part:

25 "That every license issued by the Board is subject to discipline, including suspension or
26 revocation."

27 8. Section 4301 states, in pertinent part:

28 "The board shall take action against any holder of a license who is guilty of unprofessional

1 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
2 Unprofessional conduct shall include, but is not limited to, any of the following:

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

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

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

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

19 "(l) The conviction of a crime substantially related to the qualifications, functions, and
20 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
21 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
22 substances or of a violation of the statutes of this state regulating controlled substances or
23 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
24 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
25 The board may inquire into the circumstances surrounding the commission of the crime, in order
26 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
27 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
28 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or

1 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
2 of this provision. The board may take action when the time for appeal has elapsed, or the
3 judgment of 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 Section 1203.4 of
5 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
6 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
7 indictment.

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

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

14 **REGULATORY PROVISIONS**

15 9. California Code of Regulations, title, 21, section 1308.13, states:

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17 "(e) Narcotic Drugs. Unless specifically excepted or unless listed in another schedule:

18 (1) Any material, compound, mixture, or preparation containing any of the following
19 narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities
20 as set forth below: . . ."

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

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

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1 DRUG STATUTES

2 11. Health and Safety Code section 11170 states that "[n]o person shall prescribe,
3 administer, or furnish a controlled substance for himself."

4 12. Health and Safety Code section 11173, subdivision (a), states "[n]o person shall
5 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
6 administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation,
7 or subterfuge; or (2) by the concealment of a material fact."

8 13. Health and Safety Code section 11350, subdivision (a), states, in pertinent part:
9 "Except as otherwise provided in this division, every person who possess (1) any controlled
10 substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054,
11 specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in
12 subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2)
13 any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
14 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in
15 this state, shall be punished by imprisonment in the state prison."

16 14. Health and Safety Code section 11377, subdivision (a), states, in pertinent part:
17 "Except as authorized by law and as otherwise provided in subdivision (b) or Section
18 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
19 Business and Professions Code, every person who possesses any controlled substance which is
20 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in
21 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),
22 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)
23 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section
24 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to
25 practice in this state, shall be punished by imprisonment in a county jail for a period of not more
26 than one year or in the state prison."

27 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

28 15. **Marijuana**, (Cannabis) is a hallucinogenic Schedule I controlled substance as

1 defined in Health and Safety Code section 11054 (d)(13) and a dangerous drug according to
2 Business and Professions Code section 4022.

3 **FIRST CAUSE FOR DENIAL OF APPLICATION**

4 **(Convictions of Substantially-Related Crimes)**

5 16. Respondent's application is subject to denial under section 480, subdivision (a)(1), in
6 conjunction with California Code of Regulations, title 16, section 1770, on the grounds of
7 unprofessional conduct, in that Respondent was convicted of crimes are substantially related to
8 the qualifications, functions, or duties of the business or profession for which the application is
9 made as follows:

10 a. On or about September 24, 2012, after pleading *guilty*, Respondent was convicted of
11 one misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving a
12 vehicle while under the influence of an alcoholic beverage and or drugs]; and one misdemeanor
13 count of violating Vehicle Code section 23152, subdivision (b) [driving a vehicle while having
14 0.08% and more, by weight, of alcohol in the blood], in the criminal proceeding entitled *The*
15 *People of the State of California v. Rodolfo Aroyo Pinales* (Super. Ct. Orange County, 2012, No.
16 12WM09245). The court placed Respondent on probation for a period of 3 years, and fined him.
17 The circumstances surrounding the conviction are that on or about August 26, 2012, Orange
18 County Sheriff's Department Officers, while on duty, during a routine traffic stop, stopped the
19 Respondent after observing that his center brake light was broken, and the license plate light was
20 broke also, in violation of Vehicle Code sections 24252, subdivision (a) and 24601. The officers
21 made contact with the Respondent and smelled an odor of an alcoholic beverage emitting from
22 his breath and observed him to have bloodshot, watery eyes. The Respondent displayed objective
23 symptoms of being under the influence of an alcoholic beverage and admitted to the officers that
24 he had, "a couple of beers." The Respondent agreed to a series of field sobriety tests which he
25 failed to complete satisfactorily. The Respondent subsequently agreed to a Preliminary Alcohol
26 Screening (PAS) test with results of 0.184% BAC and 0.176 % BAC.

27 b. On or about October 22, 2010, after pleading *nolo contendere*, Respondent was
28 convicted of one misdemeanor count of violating Health and Safety Code section 11357,

1 subdivision (c) [possession of marijuana over 28.5 grams], in the criminal proceeding entitled *The*
2 *People of the State of California v. Rodolfo Aroyo Pinales* (Super. Ct. Los Angeles County, 2010,
3 No. TA114862-01). The court sentenced Respondent to serve 3 days in jail, placed him on
4 probation for a period of 36 months, and fined him. The circumstances surrounding the
5 conviction are that on or about September 24, 2010, Los Angeles Sheriff's Department Officers
6 while patrolling the streets of Lynwood, California, conducted a probation compliance check on
7 an individual walking the streets. The individual took the officers to his place of residence for a
8 compliance check and the Respondent was observed walking from the back yard from a back
9 room at the residence. The officers made contact with the Respondent and verified that he was
10 residing at the location. The officers conducted a protective sweep of the entire residence and
11 during the inspection of the small back room where the Respondent was residing, in plain view
12 the officers observed a large amount of a green leafy substance "Marijuana" laying on a desk.
13 The officers also observed 8 large individually packaged baggies containing "Marijuana", 1 large
14 plastic baggie containing 5 large bars of "Marijuana", and a sandwich bag box containing several
15 unused sandwich baggies. The officers were told by a witness that the Respondent sells
16 "Marijuana" and the Respondent even yelled out to the officers, it was just some "Cheap Ass
17 Stress." The Respondent was subsequently convicted of violating Health and Safety Code section
18 11357, subdivision (c).

19 **SECOND CAUSE FOR DENIAL OF APPLICATION**

20 **(Convictions Involving Alcohol and / or Drugs)**

21 17. Respondent's application is subject to denial under sections 4300 and 4301,
22 subdivision (k), on the grounds of unprofessional conduct, in that Respondent was convicted of
23 crimes involving the use, consumption, or self-administration of alcohol and / or dangerous drugs.
24 Complainant refers to, and by this reference incorporates, the allegations set forth above in
25 paragraph 16, subparagraphs (a) and (b), and paragraph 22 below, subdivision (a), inclusive, as
26 though set forth fully.

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THIRD CAUSE FOR DENIAL OF APPLICATION

(Dangerous Use of Alcohol and / or Drugs)

18. Respondent's application is subject to denial under sections 4300 and 4301, subdivision (h), on the grounds of unprofessional conduct, in that Respondent administered to himself alcohol and / or drugs to the extent or in a manner as to be dangerous or injurious to himself or others. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 16, subparagraphs (a) and (b), and paragraph 22 below, subparagraph (a), inclusive, as though set forth fully.

FOURTH CAUSE FOR DENIAL OF APPLICATION

(Possession of a Controlled Substance Without a Valid Prescription)

19. Respondent's application is subject to denial under sections 4060, 4300 and 4301, subdivision (j), on the grounds of unprofessional conduct, in that Respondent violated Health and Safety Code sections 11170, 11173, subdivision (a), 11350, subdivision (a), and 11377, subdivision (a), in that Respondent was found to be in possession of a controlled substance without a valid prescription. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 16, subparagraph (b), and paragraph 22 below, subparagraph (a), inclusive, as though set forth fully.

FIFTH CAUSE FOR DENIAL OF APPLICATION

(Acts Involving Dishonesty, Fraud, or Deceit)

20. Respondent's application is subject to denial under sections 480, subdivision (a)(2), and 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent was convicted of crimes that involved dishonest acts, fraudulent, and /or deceitful acts with the intent to substantially benefit himself, or substantially injure another. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 16, subparagraph (b), and paragraph 22 below, subparagraph (a), inclusive, as though set forth fully.

SIXTH CAUSE FOR DENIAL OF APPLICATION

(Acts Warranting Denial of Licensure)

21. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)

1 and (a)(3)(B) and 4301, subdivision (p), on the grounds of unprofessional conduct, in that
2 Respondent was convicted of crimes and committed acts which if done by a licentiate would be
3 grounds for suspension or revocation of his license, as follows:

4 a. Respondent was convicted of crimes substantially related to the qualifications,
5 functions, or duties of a pharmacy technician which to a substantial degree evidence his present
6 or potential unfitness to perform the functions authorized by his license in a manner consistent
7 with the public health, safety, or welfare, in violation of sections 4301, subdivision (l) and 490, in
8 conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,
9 and by this reference incorporates, the allegations set forth above in paragraphs 16 through 20,
10 and paragraph 22, below, subparagraph (a), inclusive, as though set forth fully.

11 b. Respondent was convicted of crimes involving the use, consumption, or self-
12 administration of alcohol and / or dangerous drugs, in violation sections 4300 and 4301,
13 subdivision (k). Complainant refers to, and by this reference incorporates, the allegations set
14 forth above in paragraph 16, subparagraphs (a) and (b), and below in paragraph 22, subparagraph
15 (a), inclusive, as though set forth fully.

16 c. Respondent administered to himself alcohol and / or drugs to the extent or in a
17 manner as to be dangerous or injurious to himself or others, in violation of sections 4300 and
18 4301, subdivision (h). Complainant refers to, and by this reference incorporates, the allegations
19 set forth above in paragraph 16, subparagraphs (a) and (b), and paragraph 22 below, subparagraph
20 (a), inclusive, as though set forth fully.

21 d. Respondent violated Health and Safety Code sections 11170, 11173, subdivision (a),
22 11350, subdivision (a), and 11377, subdivision (a), in that Respondent was found to be in
23 possession of controlled substances without a valid prescription, in violation of sections 4060,
24 4300 and 4301, subdivision (j). Complainant refers to, and by this reference incorporates, the
25 allegations set forth above in paragraph 16, subparagraph (b), and paragraph 22 below,
26 subparagraph (a), inclusive, as though set forth fully.

27 e Respondent was convicted of crimes that involved dishonest acts, fraudulent, and /or
28 deceitful acts with the intent to substantially benefit himself, or substantially injure another, in

1 violation of sections 480, subdivision (a)(2), and 4301, subdivision (f). Complainant refers to,
2 and by this reference incorporates, the allegations set forth above in paragraph 16, subparagraph
3 (b), and below in paragraph 22, subparagraph (a), inclusive, as though set forth fully.

4 **ADDITIONAL DISCIPLINARY CONSIDERATION**

5 22. To determine the degree of discipline, if any to be imposed on Respondent,
6 Complainant alleges the following:

7 a. On or about April 11, 2012, Respondent in his Application for Pharmacy Technician
8 Registration Certificate, signed under penalty and perjury to the truthfulness and correctness of
9 the information and statements made disclosed that he had a criminal history. Respondent's
10 criminal history is as follows:

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Date of Arrest	Convic. Date	Jurisdiction	Case No.	Violation
12 12/16/08	12/18/08	Los Angeles	8CP12098	13 Health & Safety Code section 11357 [possession of marijuana]
14 04/06/02	06/14/02	Los Angeles	2SG0091301	15 Vehicle Code section 14601.1 16 subdivision (a) [driving while 17 license suspended], and section 18 23152 subdivision (b) [driving under the influence of alcohol]
19 03/03/02	05/01/02	Los Angeles	2SE01352	20 Health & Safety Code section 21 11357 subdivision (b) [possession of marijuana less than 28.5 grams]
22 02/26/01	06/22/01	Los Angeles	1CM0226101	23 Vehicle Code section 14601.1 subdivision (a) [driving while license suspended]
24 02/19/00	02/27/01	Los Angeles	OSG00726	25 Health and Safety Code section 26 11357 subdivision (b) [possession of marijuana less than 28.5 grams]

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1	02/28/99	03/02/99	Los Angeles	9LM01101	Penal Code sections 148 subdivision (a) [resisting delaying or obstructing officer] & 602.5 [entering a noncommercial dwelling house, apartment, etc. without consent of owner]
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6	02/22/98	04/23/98	Los Angeles	8LL02917	Vehicle Code section 31 [false information to peace officer]
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8	08/11/96	Unknown	Los Angeles	TA045966	Vehicle Code section 10851 subdivision (a) [theft and unlawful taking or driving of a vehicle]
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10					
11	04/03/02	05/14/02	Los Angeles	2SG00743	Health and Safety Code section 11357 subdivision (b) [possession of more than 28.5 grams of marijuana]
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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 Rodolfo Arroyo Pinales for registration as a Pharmacy Technician; and
2. Taking such other and further action as deemed necessary and proper.

DATED: _____

5/8/14

Virginia Herold

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

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