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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. 4527

13 **CARLOS KYAN SOLANO**

STATEMENT OF ISSUES

14 Registration as a Pharmacy Technician
15 Applicant

16 Respondent.

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 2. On or about June 21, 2012, the Board of Pharmacy, Department of Consumer Affairs
22 received a Pharmacy Technician Application from Carlos Kyan Solano ("Respondent"). On or
23 about May 22, 2012, Carlos Kyan Solano certified under penalty of perjury to the truthfulness of
24 all statements, answers, and representations in the application. The Board denied the application
25 on November 7, 2012.

26 **JURISDICTION AND STATUTORY PROVISIONS**

27 3. This Statement of Issues is brought before the Board of Pharmacy ("Board"),
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code ("Code") unless otherwise indicated.

2 4. Section 480 of the Code states, in pertinent part:

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

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

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

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

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

19 5. Section 493 of the Code states:

20 "Notwithstanding any other provision of law, in a proceeding conducted
21 by a board within the department pursuant to law to deny an application for a license
22 or to suspend or revoke a license or otherwise take disciplinary action against a
23 person who holds a license, upon the ground that the applicant or the licensee has
24 been convicted of a crime substantially related to the qualifications, functions, and
25 duties of the licensee in question, the record of conviction of the crime shall be
26 conclusive evidence of the fact that the conviction occurred, but only of that fact, and
27 the board may inquire into the circumstances surrounding the commission of the
28 crime in order to fix the degree of discipline or to determine if the conviction is
substantially related to the qualifications, functions, and duties of the licensee in
question.

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

6. Section 492 of the Code states:

"Notwithstanding any other provision of law, successful completion of
any diversion program under the Penal Code, or successful completion of an alcohol
and drug problem assessment program under Article 5 (commencing with section
23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
agency established under Division 2 ([Healing Arts] commencing with Section 500)
of this code, or any initiative act referred to in that division, from taking disciplinary
action against a licensee or from denying a license for professional misconduct,
notwithstanding that evidence of that misconduct may be recorded in a record
pertaining to an arrest.

This section shall not be construed to apply to any drug diversion

1 program operated by any agency established under Division 2 (commencing with
2 Section 500) of this code, or any initiative act referred to in that division.”

3 7. Section 490 of the Code states in pertinent part:

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

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

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

21 8. Section 4301 of the Code states in pertinent part:

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

26 ...

27 (f) The commission of any act involving moral turpitude, dishonesty,
28 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.

...

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

...

(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

1 States Code regulating controlled substances or of a violation of the statutes of this
2 state regulating controlled substances or dangerous drugs shall be conclusive
3 evidence of unprofessional conduct. In all other cases, the record of conviction shall
4 be conclusive evidence only of the fact that the conviction occurred. The board may
5 inquire into the circumstances surrounding the commission of the crime, in order to
6 fix the degree of discipline or, in the case of a conviction not involving controlled
7 substances or dangerous drugs, to determine if the conviction is of an offense
8 substantially related to the qualifications, functions, and duties of a licensee under this
9 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
10 contendere is deemed to be a conviction within the meaning of this provision. The
11 board may take action when the time for appeal has elapsed, or the judgment of
12 conviction has been affirmed on appeal or when an order granting probation is made
13 suspending the imposition of sentence, irrespective of a subsequent order under
14 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
15 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
16 dismissing the accusation, information, or indictment.

17 ...

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

23 REGULATORY PROVISIONS

24 9. California Code of Regulations, title 16, section 1770 provides:

25 “For the purpose of denial, suspension, or revocation of a personal or
26 facility license pursuant to Division 1.5 (commencing with Section 475) of the
27 Business and Professions Code, a crime or act shall be considered substantially
28 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.”

29 DRUG DEFINITIONS

30 10. Methamphetamine is a Schedule II Controlled Substance pursuant to Health and
31 Safety Code section 11055 and is a dangerous drug pursuant to Business and Professions Code
32 section 4022.

33 FIRST CAUSE FOR DENIAL OF APPLICATION

34 (Conviction of Substantially Related Crime)

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

1 12. On or about April 29, 2002, Respondent pled guilty to and was convicted of one
2 misdemeanor count of violating Penal Code section 243(e)(1) [battery of spouse] in the criminal
3 proceeding entitled *The People of the State of California v. Carlos Solano* (Super. Ct. of
4 California, County of Los Angeles, 2002, Case No. 2FC00204). As part of the plea, Respondent
5 was ordered to enroll in the Kaiser Mental Health Program. On or about June 19, 2002, the court
6 ordered Respondent to serve sixty (60) days in Los Angeles County Jail and placed Respondent
7 on probation for three (3) years, with terms and conditions.

8 13. On or about October 16, 2002, Respondent pled nolo contendere to and was
9 convicted of one misdemeanor count of violating Vehicle Code section 12500(a) [drive with
10 suspended license] in the criminal proceeding entitled *The People of the State of California v.*
11 *Carlos Kyan Solano* (Super. Ct. of California, County of Los Angeles, 2002, Case No.
12 2SM03064). The court ordered Respondent to serve 4 days in Los Angeles County Jail and
13 placed Respondent on probation for one (1) year, with terms and conditions.

14 14. On or about July 7, 2003, Respondent pled nolo contendere to and was convicted of
15 one misdemeanor count of violating Penal Code section 243(e)(1) [battery of spouse] in the
16 criminal proceeding entitled *The People of the State of California v. Carlos Kyan Solano* (Super.
17 Ct. of California, County of Los Angeles, 2003, Case No. 3FC00254). The court ordered
18 Respondent to serve thirty (30) days in Los Angeles County Jail and placed Respondent on
19 probation for three (3) years, with terms and conditions.

20 15. On or about February 9, 2004, Respondent pled nolo contendere to and was convicted
21 of one misdemeanor count of violating Penal Code section 484(a) [theft] in the criminal
22 proceeding entitled *The People of the State of California v. Carlos Kyan Solano* (Super. Ct. of
23 California, County of Los Angeles, 2003, Case No. 3EL10305). The court ordered Respondent to
24 serve 6 days in Los Angeles County Jail and placed Respondent on probation for a period of
25 twelve (12) months, with terms and conditions.

26 16. On or about December 2, 2010, Respondent pled nolo contendere to and was found
27 guilty of one misdemeanor count of violating Health and Safety Code section 11377(a)
28 [possession of controlled substance] in the criminal proceeding entitled *The People of the State of*

1 *California v. Carlos Kyan Solano* (Super. Ct. of California, County of Los Angeles, 2010, Case
2 No. ORI05379). The court placed Respondent on probation for a period of 1 year under the terms
3 and conditions of Proposition 36. On or about July 25, 2011, the court revoked Respondent's
4 probation, terminated the Proposition 36 program and convicted Respondent. On or about
5 October 28, 2011, the court sentenced Respondent to 90 days in Los Angeles County Jail and
6 placed Respondent on probation for three (3) years, with terms and conditions. The
7 circumstances underlying the conviction are that on or about November 30, 2010, Sheriff's
8 Officers executed a search warrant on Respondent's vehicle and residence. Sheriff's Officers
9 found a baggie containing 0.38 grams of suspected methamphetamine in the crotch area of
10 Respondent's clothing. Sheriff's officers also found a glass pipe, numerous empty Ziploc baggies
11 and a surveillance camera in Respondent's residence. When Sheriff's Officers contacted
12 Respondent, he stated "I've been using meth for years but I'm not a dealer."

13 **SECOND CAUSE FOR DENIAL OF APPLICATION**

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

15 17. Respondent's application is subject to denial under section 480, subdivision (a)(2) of
16 the Code in that Respondent committed acts involving dishonesty, fraud or deceit with the intent
17 to substantially benefit himself when he committed theft. On or about February 9, 2004,
18 Respondent was criminally convicted of this charge. The criminal conviction is described in
19 more particularity in paragraph 15 above, inclusive and hereby incorporated by reference.

20 **THIRD CAUSE FOR DENIAL OF APPLICATION**

21 **(Acts Constituting Grounds for Discipline of Licensee)**

22 18. Respondent's application is subject to denial under section 480, subdivision (a)(3) of
23 the Code in that Respondent committed acts constituting grounds for discipline of a licensee, as
24 follows:

25 19. Respondent was convicted of crimes substantially related to the qualifications,
26 functions and duties of a pharmacy technician in violation of section 490 and section 4301,
27 subdivision (l) of the Code in conjunction with California Code of Regulations, title 16, section
28

1 1770. The criminal convictions are described in more particularity in paragraphs 12 through 16
2 above, inclusive and hereby incorporated by reference.

3 20. Respondent committed an act involving dishonesty when he committed theft in
4 violation of 4301, subdivision (f) of the Code. On or about February 9, 2004, Respondent was
5 criminally convicted of this charge. The criminal conviction is described in more particularity in
6 paragraph 15 above, inclusive and hereby incorporated by reference.

7 21. Respondent committed unprofessional conduct when possessed Methamphetamine
8 and drug paraphernalia on or about November 30, 2010, in violation of section 4301 of the Code.
9 The conduct is described in more particularity in paragraph 16 above, inclusive and hereby
10 incorporated by reference.

11 22. Respondent committed unprofessional conduct he violated California statutes
12 regulating controlled substances and dangerous drugs in violation of section 4301, subdivision (j)
13 of the Code. Specifically, on or about December 2, 2010, Respondent was convicted of one
14 misdemeanor count of violating Health and Safety Code section 11377(a) [possession of
15 controlled substance]. The conviction is described in more particularity in paragraph 16 above,
16 inclusive and hereby incorporated by reference.

17 23. Respondent violated provisions of the licensing chapter in violation of section 4301,
18 subdivision (o) of the Code. The violations are described in more particularity in paragraphs 18
19 through 22 above, inclusive and hereby incorporated by reference.

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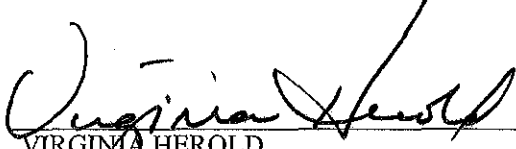
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PRAYER

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

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

DATED: 4/4/13 
VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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