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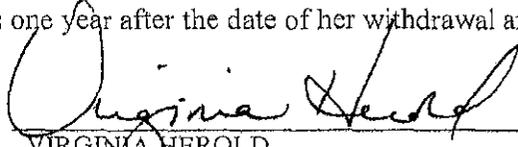
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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues
12 Against:
13 **LENA LENE E ESPINOZA**
14 **Applicant for Registration as a**
Pharmacy Technician
15
16 Respondent.

Case No. 4831
WITHDRAWAL OF
STATEMENT OF ISSUES

17 On or about February 17, 2014, Lena Lenee Espinoza (Respondent) withdrew her appeal
18 and request for a hearing on the denial of her application for registration as a pharmacy technician
19 by the Board of Pharmacy (withdrawal and waiver). Accordingly, Statement of Issues No. 4831
20 filed against Respondent is withdrawn without prejudice and the denial of her application is
21 affirmed. The earliest date on which Respondent may reapply for a pharmacy technician
22 registration is February 17, 2015, which is one year after the date of her withdrawal and waiver.

23
24 DATED: 2/25/14


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

28 SD2013705717

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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. 4831

13 **LENA LENE E ESPINOZA**

STATEMENT OF ISSUES

14 **Applicant for Registration as a**
15 **Pharmacy Technician**

16 Respondent.

17
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 September 25, 2012, the Board of Pharmacy, Department of Consumer
23 Affairs received an application for a Registration as a Pharmacy Technician from Lena Lenee
24 Espinoza (Respondent). On or about September 15, 2012, Lena Lenee Espinoza certified under
25 penalty of perjury to the truthfulness of all statements, answers, and representations in the
26 application. The Board denied the application on March 1, 2013.

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9. Section 4301 of the Code states:

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.

....

(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 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 contendere is deemed to be a conviction within the meaning of this provision. The board may take action 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 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

....

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

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1 10. Section 4022 of the Code states

2 Dangerous drug" or "dangerous device" means any drug or device unsafe
3 for self-use in humans or animals, and includes the following:

4 (a) Any drug that bears the legend: "Caution: federal law prohibits
5 dispensing without prescription," "Rx only," or words of similar import.

6 (b) Any device that bears the statement: "Caution: federal law restricts
7 this device to sale by or on the order of a _____," "Rx only," or words of
8 similar import, the blank to be filled in with the designation of the practitioner
9 licensed to use or order use of the device.

10 (c) Any other drug or device that by federal or state law can be lawfully
11 dispensed only on prescription or furnished pursuant to Section 4006.

12 11. Section 4060 of the Code states:

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

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

REGULATORY PROVISIONS

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

2 (a) When considering the denial of a facility or personal license under Section
3 480 of the Business and Professions Code, the board, in evaluating the rehabilitation
4 of the applicant and his present eligibility for licensing or registration, will consider
5 the following criteria:

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

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

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

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

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

3

4 13. California Code of Regulations, title 16, section 1770 states:

5 For the purpose of denial, suspension, or revocation of a personal or facility
6 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
7 Professions Code, a crime or act shall be considered substantially related to the
8 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.

9 **DRUGS**

10 14. Vicodin, a brand name for acetaminophen and hydrocodone bitartrate, is a
11 Schedule III controlled substance as designated by Health and Safety Code Section 11056, and is
12 a dangerous drug pursuant to Business and Professions Code section 4022.

13 **FIRST CAUSE FOR DENIAL OF APPLICATION**

14 (June 4, 2008 Criminal Conviction for Possession of a Controlled Substance – Vicodin -
15 Without a Prescription on April 26, 2008)

16 15. Respondent's application for registration as a pharmacy technician is subject to denial
17 under section 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that she was convicted of a
18 crime that is substantially related to the qualifications, duties and functions of a registered
19 pharmacy technician, and would be a ground for discipline for a registered pharmacy technician
20 under section 4301, subdivision (l) of the Code.

21 16. On or about June 4, 2008, in a criminal proceeding entitled *People of the State of*
22 *California vs. Lena Lenee Espinoza*, in the Superior Court of California, County of Orange, North
23 Justice Center, case number 08NMO6642, Respondent was convicted on her plea of guilty of
24 violating Business and Professions Code section 4060 (possession of a controlled substance
25 without a prescription), to wit: Vicodin, a misdemeanor.

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1 17. As a result of the conviction, the Court placed Respondent on 3 years informal
2 probation and ordered her to obey all laws, not use unauthorized drugs, narcotics or controlled
3 substances, not drive without a valid driver's license nor without insurance, carry valid picture
4 identification at all times, consume no alcoholic beverages and not be present in any
5 establishment where alcohol is the primary item of sale, disclose probation terms upon request of
6 any peace officer, and pay various fines and fees. On December 22, 2011, a hearing was held and
7 Respondent's Petition for Relief under Penal Code sections 1203.4/1203.4a was granted,
8 Respondent's plea of guilty was set aside and the case was dismissed.

9 18. The circumstances that led to the conviction are that on April 26, 2008, at
10 approximately 2157 hours, Fullerton Police Department Officers were dispatched to 1200 West
11 Ash, Fullerton, California, regarding suspicious circumstances. The reporting party (RP) told
12 dispatch that there was a small black 4-door sedan parked to the front of the residence which was
13 known as a "drug residence." When officers arrived, they observed vehicle described by the RP
14 and a female sitting in the driver's seat of the vehicle. Officers parked down the street, observed
15 the vehicle depart the area at approximately 50mph in a 30mph zone, and officers initiated a
16 traffic stop.

17 19. Officers made contact with the driver (Respondent) who appeared to be very nervous.
18 Officers asked Respondent if she had any illegal weapons or contraband and she told officers she
19 did not. Respondent gave officers permission to search her person and vehicle. During the
20 search of Respondent's vehicle, officers located her purse underneath the driver's seat. Inside the
21 purse was a prescription bottle that had the name of the patient scraped off. The prescription was
22 for Ibuprofen 800mg. Inside the bottle were 9 white pills with "M357" inscribed on them and
23 several small redish pills. Respondent told officers the while pills were ibuprofen and the reddish
24 pills were advil. Officers contacted poison control and the duty clerk advised the officers that the
25 pills inscribed with "M357" were Vicodin. Officers placed Respondent under arrest for
26 possession of a controlled substance without a prescription and transported her to the Fullerton
27 City Jail where she was booked.

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1 denied or disciplined by a government authority in this state or any other state? **If 'yes,' provide**
2 **the name of company, type of permit, type of action, year of action and state..**" Respondent
3 replied, "No," when in fact, on or August 12, 2010, the Board denied Respondent's application
4 received by the Board on July 21, 2009.

5
6 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

7 **(Unprofessional Conduct – Commission of Acts Involving Dishonesty – Making a False**
8 **Statement of Fact in Letters to Board)**

9 24. Respondent's application is subject to denial under Code section 480, subdivisions
10 (a)(2), for dishonesty, which would be a ground for discipline under section 4301, subdivision (f),
11 for a registered pharmacy technician, in that Respondent gave the Board different accounts of the
12 circumstances surrounding the June 4, 2008 conviction for violating Business and Professions
13 Code section 4060 (possession of a controlled substance without a prescription), to wit: Vicodin.

14 25. In an undated letter received by the Board on or about April 21, 2010, Respondent
15 wrote, "When I was charged with possess [sic] controlled substance without a prescription it was
16 for 1 vicodin. A month before I went snowboarding fell hit my back but could not go to the dr.
17 cuz I had no time." On or about April 26, 2008, Fullerton Police Department Officers arrested
18 Respondent for possessing 9 Vicodin pills without a prescription.

19 26. In an undated letter received by the Board on or about January 14, 2013, Respondent
20 wrote, "In 2008 I was charged with possession of a controlled substance. Months before the
21 incident I injured my back during a snowboarding trip. The doctor gave me a prescription for the
22 pain (vicodin). When I was pulled over I was no longer taking the medication. . . . I must have
23 left a pill in my car. The officer . . . found 1 vicodin in my car and took me to jail. On or about
24 April 26, 2008, Fullerton Police Department Officers arrested Respondent for possessing 9
25 Vicodin pills without a prescription.

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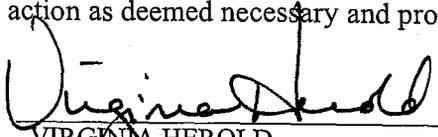
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PRAYER

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 Lena Lenee Espinoza for a Pharmacy Technician Registration.
2. Taking such other and further action as deemed necessary and proper.

DATED: 11/4/13



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

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