

1 KAMALA D. HARRIS  
Attorney General of California  
2 ALFREDO TERRAZAS  
Senior Assistant Attorney General  
3 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
4 State Bar No. 101336  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2105  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

8  
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. 4837

13 **AMANDA NICOLE MULLENNIEX**

**STATEMENT OF ISSUES**

14 **Applicant for Registration as a Pharmacy**  
15 **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 April 5, 2012, the Board of Pharmacy, Department of Consumer Affairs  
23 received an application for a Registration as a Pharmacy Technician from Amanda Nicole  
24 Mullenniex (Respondent). On or about March 22, 2012, Amanda Nicole Mullenniex certified  
25 under penalty of perjury to the truthfulness of all statements, answers, and representations in the  
26 application. The Board denied the application on March 12, 2013.

27 ///

28 ///

1 **JURISDICTION**

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

5 4. Section 4300, subdivision (c) of the Code states "the board may refuse a license to any  
6 applicant guilty of unprofessional conduct."

7 5. Section 475 of the Code states:

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

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

12 (2) Conviction of a crime.

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

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

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

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

23 6. Section 480 of the Code states:

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

26 (1) Been convicted of a crime. A conviction within the meaning of this  
27 section means a plea or verdict of guilty or a conviction following a plea of nolo  
28 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.

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

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

11 (c) A board may deny a license regulated by this code on the ground that  
12 the applicant knowingly made a false statement of fact required to be revealed in the  
13 application for the license.

14 7. Section 482 of the Code states:

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

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

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

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

21 8. Section 493 of the Code states:

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

///

///

///

///

///

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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.

....

(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.

....

(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.

///  
///

1 **REGULATORY PROVISIONS**

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

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

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

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

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

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

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

17 . . . .

18 11. California Code of Regulations, title 16, section 1770 states:

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

25 ///

26 ///

27 ///

28 ///

///

///

///

///

///

///

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Unprofessional Conduct - Use of Alcohol in a Manner Dangerous or Injurious**  
3 **to Self or Others on June 18, 2008)**

4 12. Respondent's application is subject to denial under section 480, subdivisions (a)(3)(A)  
5 of the Code in that she used alcohol in a manner dangerous or injurious to herself or others, which  
6 would be a ground for discipline for a registered pharmacy technician under section 4301,  
7 subdivision (h) of the Code. The circumstances are as follows:

8 13. On or about June 18, 2008, at approximately 9:30 p.m., Chino Police Department  
9 Officers responded to 6115 Joaquin Street reference a verbal confrontation between a father and  
10 daughter. Upon arrival, officers contacted the Reporting Party (RP) who told them his daughter  
11 (Respondent) had been drinking an unknown amount of alcohol, was under the influence, was  
12 attempting to leave in the residence in her vehicle, that the RP had taken Respondent's keys away,  
13 and that this was the reason for the argument between them. The RP told officers that Respondent  
14 became upset and intentionally threw the RP's cellular phone on the ground causing it to break  
15 into pieces. Officers contacted Respondent inside the residence and could smell the odor of an  
16 alcoholic beverage emitting from her breath and person. The RP returned the car keys to  
17 Respondent and asked officers to take the keys away from her. Officers took the keys away from  
18 Respondent, who became angry and started swinging her arms violently, striking a mirror that was  
19 hanging from the wall which broke into pieces. At that point the RP told officers he wanted  
20 Respondent arrested. Officers followed Respondent into a bedroom and asked her twice to stand  
21 up and Respondent refused. When officers grabbed Respondent's wrist and directed her once  
22 again to stand up, Respondent began screaming and kicking her legs violently. Officers then pulled  
23 her off the bed and onto the ground and held her legs to prevent her from kicking the officers.  
24 Respondent continued to resist and refused to follow the officers' orders and Respondent was  
25 handcuffed. Respondent continued to resist the officers, continued to scream and moved her body  
26 aggressively attempting to break away from the officers. Officers placed Respondent in the back  
27 seat of their patrol unit and Respondent continued screaming and began  
28

1 hitting the back window of the patrol unit with her head. Respondent was given a citation for  
2 committing vandalism and booked at the West Valley Detention Facility.

3 14. On or about July 18, 1008, in a criminal proceeding entitled *People of the State of*  
4 *California v. Amanda N. Mullenniex*, in the Superior Court of California, County of San  
5 Bernardino, case number MCH801134, charges were filed against Respondent for violating Penal  
6 Code section 594(B)(1) (vandalism), a misdemeanor. On or about March 17, 2009, the charge  
7 was dismissed in the interest of justice.

8 **SECOND CAUSE FOR DENIAL OF APPLICATION**

9 **(August 26, 2009 Criminal Conviction for Being Drunk in Public on August 9, 2009)**

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

14 16. On or about August 26, 2009, in a criminal proceeding entitled *People of the State of*  
15 *California v. Amanda Nicole Mullenniex*, in the Superior Court of California, County of San  
16 Bernardino, case number 2867343AM, Respondent was convicted on her plea of guilty of  
17 violating Penal Code section 647(f) (drunk in public), a misdemeanor.

18 17. As a result of the conviction, Respondent was ordered to pay a \$200 fine.

19 18. The circumstances that led the conviction are that on August 9, 2009, at  
20 approximately 2:30 a.m., San Bernardino County Sheriff's Deputies responded to 4109 El Molino  
21 Blvd., Chino Hills, California, regarding a report of a prowler. The reporting party (RP) told the  
22 dispatcher that someone was banging on his window, that it was his ex-girlfriend, and that he  
23 believed she was intoxicated. Upon arrival, deputies heard a subject knocking on a glass window  
24 to the rear of the residence and observed a female subject (Respondent). Deputies observed  
25 Respondent swaying from side to side as she was walking towards them. Deputies made contact  
26 with Respondent and could smell an odor of alcohol emitting from her person and observed that  
27 she had slurred speech and watery/bloodshot eyes. Deputies asked Respondent if she had been  
28 drinking and Respondent told deputies that she had been at a party and had been playing "beer

1 pong.” Deputies placed Respondent under arrest for being drunk in public, issued her a citation  
2 and transported her to the West Valley Detention Center for booking. While en route, Respondent  
3 cursed at deputies and kicked the glass between the back seat and driver’s seat of the patrol  
4 vehicle.

5 **THIRD CAUSE FOR DENIAL OF APPLICATION**

6 **(October 19, 2009 Criminal Conviction for Being Drunk in Public on October 1, 2009)**

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

11 20. On or about October 19, 2009, in a criminal proceeding entitled *People of the State of*  
12 *California v. Amanda Nicole Mullenniex*, in the Superior Court of California, County of San  
13 Bernardino, case number 2989761AM, Respondent was convicted on her plea of guilty of  
14 violating Penal Code section 647(f) (drunk in public), a misdemeanor.

15 21. As a result of the conviction, Respondent was placed on summary probation for one  
16 year, ordered to violate no laws, obey all orders of the court, and pay a \$360 fine.

17 22. The circumstances that led to the conviction are that on October 1, 2009, at  
18 approximately 2:30 a.m., San Bernardino Sheriff’s Deputies responded to the area of El Molino  
19 Blvd. and Pipeline Avenue in Chino, California, regarding a call of a disturbance with a female  
20 screaming for help and honking her vehicle’s horn. Upon arrival, Deputies saw a female  
21 (Respondent) sitting in the passenger seat of a vehicle with the passenger door open. Respondent  
22 had a strong odor of vomit and alcohol emanating from her person, and Deputies observed that she  
23 had red watery eyes, slurred speech and an unsteady gate. Respondent told Deputies that she had  
24 been drinking at Shamrock’s Bar with her boyfriend and denied driving to that location. Deputies  
25 arrested Respondent for being drunk in public and transported her to the West Valley Detention  
26 Center for booking and sobering. Respondent was issued a citation.

27 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

1           **(March 23, 2010 Criminal Conviction for Driving Under the Influence of Alcohol With a**  
2           **Blood Alcohol Content of 0.08% or More [0.21%] on December 19, 2009)**

3           23. Respondent's application is subject to denial under section 480, subdivisions (a)(1) and  
4 (a)(3)(A) of the Code in that she was convicted of a crime that is substantially related to the  
5 qualifications, duties and functions of a registered pharmacy technician, and would be a ground for  
6 discipline for a registered pharmacy technician under section 4301, subdivision (l), of the Code.

7           24. On or about March 23, 2010, in a criminal proceeding entitled *People of the State of*  
8 *California v. Amanda Nicole Mullenniex*, in the Superior Court of California, County of San  
9 Bernardino, case number TCH1000158, Respondent was convicted on her plea of guilty of  
10 violating Vehicle Code section 23152(b) (driving with a blood alcohol concentration of 0.08% or  
11 more [0.21% BAC]), a misdemeanor. As a result of a plea bargain, a count for violating Vehicle  
12 Code section 23152(a) (DUI), a misdemeanor, was dismissed.

13           25. As a result of the conviction, the Court placed Respondent on 3 years summary  
14 probation and ordered her to serve 2 days in the San Bernardino County Jail, with one day credit  
15 for time served, and approved the remaining day to be served through the weekender/work release  
16 program. The Court also ordered her to violate no laws, pay various fines and fees, not drive a  
17 motor vehicle unless properly licensed and insured, not drive a motor vehicle with a measurable  
18 amount of alcohol in her system, and submit to a blood alcohol test upon request of any arresting  
19 officer.

20           26. The circumstances that led to the conviction are that on December 19, 2009, at  
21 approximately 12:30 a.m., Chino Police Department Officers were dispatched to 12953 Arlington  
22 Court regarding an unknown traffic collision. Upon arrival, Officers made contact with a female  
23 suspect (Respondent) who was standing on the west curb. Officers determined Respondent had  
24 been involved in a collision with a parked vehicle. Officers smelled a strong odor of an alcoholic  
25 beverage emitting from her breath and noticed that her eyes were red and watery and that her  
26 speech was slow and slurred. Officers had Respondent perform field sobriety tests, which  
27 Respondent failed. Officers placed Respondent under arrest and transported her to the West  
28

1 Valley Detention Center for a blood test. The blood test results registered a 0.21 percent blood  
2 alcohol concentration (BAC).

3 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

4 **(Unprofessional Conduct - Use of Alcohol in a Manner Dangerous or Injurious to Self or**  
5 **Others on November 25, 2011)**

6 27. Respondent's application is subject to denial under section 480, subdivisions (a)(3)(A)  
7 of the Code in that she used alcohol in a manner dangerous or injurious to herself or others, which  
8 would be a ground for discipline for a registered pharmacy technician under section 4301,  
9 subdivision (h) of the Code. The circumstances are as follows:

10 28. On November 25, 2011, at approximately 10:30 p.m., Chino Police Department  
11 Officers were dispatched to 6115 Joaquin Street, Chino, California, reference a possible family  
12 disturbance between a daughter and her parents. Upon arrival, Officers made contact with the  
13 reporting party (RP) who told Officers that he had driven to Chino Hills with his wife to pick up  
14 his stepdaughter (Respondent) as Respondent had been involved in an argument with her  
15 boyfriend's parents who called the RP and asked him to come and get her. When the RP began  
16 driving Respondent home, she became extremely angry and violent and yelled at her parents and  
17 swung her purse at her mother repeatedly while she was seated in the back seat. At one point,  
18 Respondent exited the vehicle while it was still moving and the RP called the police department to  
19 report the incident. Other Officers, while en route to the RP's location, observed Respondent  
20 walking southbound on Magnolia Avenue. Officers observed she was taking long strides, weaving  
21 as she walked, and flailing her arms. Officers approached Respondent and asked her to sit on the  
22 curb. Upon making contact with Respondent, Officers smelled a strong odor of alcohol emitting  
23 from her breath. Respondent told the Officers that she had been out with friends at a sushi bar in  
24 Chino Hills and had consumed Saki and beer earlier that evening. Respondent told officers about  
25 the argument she had with the RP and her attitude fluctuated drastically between crying, yelling  
26 and anger, and her speech was repetitive and rapid. Officers determined that Respondent was too  
27 intoxicated to care for herself and placed her under arrest. While being escorted to the back seat  
28 of the patrol vehicle, Respondent became angry and screamed vulgarities and obscenities at

1 officers. Respondent's demeanor changed and became cooperative upon arrival at the West Valley  
2 Detention Center. Respondent was issued a citation. On June 8, 2012, the criminal matter was  
3 dismissed on motion of the People.

4  
5 **SIXTH CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct - Use of Alcohol in a Manner Dangerous or Injurious to Self or  
Others on August 9, 2009, October 1, 2009 and December 19, 2009)**

7 29. Respondent's application is subject to denial under section 480, subdivisions (a)(3)(A)  
8 of the Code in that she used alcohol in a manner dangerous or injurious to herself or others, which  
9 would be a ground for discipline for a registered pharmacy technician under section 4301,  
10 subdivision (h) of the Code, as is more fully detailed at paragraphs 15-18, 19-22 and 23-26, above,  
11 which are incorporated here by reference.

12 **SEVENTH CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct – Commission of Acts Involving Dishonesty – Making a False  
14 Statement of Fact Required to Be Revealed on Application)**

15 30. Respondent's application is subject to denial under Code section 480, subdivisions  
16 (a)(2) and (c), in that she made a false statement of fact required to be revealed in her application  
17 to the Board, a dishonest act, which would be a ground for discipline for a registered pharmacy  
18 technician under section 4301, subdivision (f). The circumstances are as follows:

19 31. On or about March 22, 2012, Respondent signed her Application for Registration as a  
20 Pharmacy Technician certifying under penalty of perjury under the laws of the State of California  
21 that her answers in the application were true and correct. In response to the question "Have you  
22 ever been convicted of any crime in any state, the USA and its territories, military court or foreign  
23 country? Check the box next to "Yes" if, you have ever been convicted or plead guilty to any  
24 crime. 'Conviction' includes a plea of no contest and any conviction that has been set aside or  
25 deferred pursuant to Sections 1000 or 1203.4 of the Penal Code, including infractions,  
26 misdemeanors and felonies. You do not need to report a conviction for an infraction with a fine of  
27 less than \$300 unless the infraction involved alcohol or controlled substances. You must,  
28 however, disclose any convictions in which you entered a plea of no contest and any convictions

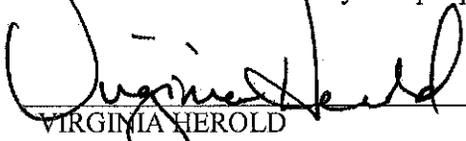
1 that were subsequently set aside pursuant or deferred pursuant to sections 1000 or 1203.4 of the  
2 Penal Code.” Respondent replied, “No,” when in fact, on or about August 26, 2009, she was  
3 convicted of violating Penal Code section 647(f), as is detailed at paragraphs 15-18, above, which  
4 are incorporated here by reference; on or about October 19, 2009, she was convicted of violating  
5 Penal Code section 647(f), as is detailed at paragraphs 19-22, above, which are incorporated here  
6 by reference; and on or about March 23, 2010, she was convicted of violating Vehicle Code  
7 section 23152(b), as is detailed at paragraphs 23-26, above, which are incorporated here by  
8 reference.

9 **PRAYER**

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

- 12 1. Denying the application of Amanda Nicole Mullenniex for a Registration as a  
13 Pharmacy Technician;  
14 2. Taking such other and further action as deemed necessary and proper.

15 DATED: 11/14/13

16   
17 VIRGINIA HEROLD  
18 Executive Officer  
19 Board of Pharmacy  
20 Department of Consumer Affairs  
21 State of California  
22 Complainant

23 SD2013705718  
24 70768974.doc  
25  
26  
27  
28