

1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 PHILLIP L. ARTHUR
Deputy Attorney General
4 State Bar No. 238339
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 322-0032
Facsimile: (916) 327-8643
7 E-mail: Phillip.Arthur@doj.ca.gov
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. 4890

13 **SAV-RX PRESCRIPTION SERVICES**

STATEMENT OF ISSUES

14 [REDACTED]
15 **JAMES BARTA, OWNER**
16 [REDACTED]

17 **Nonresident Pharmacy Permit Applicant**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
23 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

24 2. On or about October 12, 2012, the Board of Pharmacy, Department of Consumer
25 Affairs received an application for a Nonresident Pharmacy Permit from Sav-Rx Prescription
26 Services, [REDACTED] (Respondent). On or about October 5, 2012,
27 Respondent's sole owner and president, James Barta, as well as Respondents' two chief financial
28 officers, [REDACTED] and [REDACTED] certified under penalty of perjury to the truthfulness of all

1 statements, answers, and representations in the application. The Board denied the application on
2 May 6, 2013.

3 JURISDICTION

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

7 STATUTORY PROVISIONS

8 4. Section 480 of the Business and Professions Code ("Code") provides, in pertinent
9 part:

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

11 (1) Been convicted of a crime. A conviction within the meaning of this
12 section means a plea or verdict of guilty or a conviction following a plea of nolo
13 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
14 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.

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

16 (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.

17 (B) The board may deny a license pursuant to this subdivision only if the
18 crime or act is substantially related to the qualifications, functions, or duties of the
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 by a
21 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
22 who holds a license, upon the ground that the applicant or the licensee has been
convicted of a crime substantially related to the qualifications, functions, and duties
23 of the licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
24 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
25 related to the qualifications, functions, and duties of the licensee in question.

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

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1 6. Section 4300 of the Code states, in pertinent part that the board may refuse a license
2 to any applicant guilty of unprofessional conduct.

3 7. Section 4301 of the Code states, in pertinent part:

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

8 ...

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

12 ...

13 (d) The conviction of a crime substantially related to the qualifications,
14 functions, and duties of a licensee under this chapter. The record of conviction of a
15 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
16 States Code regulating controlled substances or of a violation of the statutes of this
17 state regulating controlled substances or dangerous drugs shall be conclusive
18 evidence of unprofessional conduct. In all other cases, the record of conviction shall
19 be conclusive evidence only of the fact that the conviction occurred. The board may
20 inquire into the circumstances surrounding the commission of the crime, in order to
21 fix the degree of discipline or, in the case of a conviction not involving controlled
22 substances or dangerous drugs, to determine if the conviction is of an offense
23 substantially related to the qualifications, functions, and duties of a licensee under
24 this chapter. A plea or verdict of guilty or a conviction following a plea of nolo
25 contendere is deemed to be a conviction within the meaning of this provision. The
26 board may take action when the time for appeal has elapsed, or the judgment of
27 conviction has been affirmed on appeal or when an order granting probation is made
28 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. . . .

REGULATORY PROVISION

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

 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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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Criminal Conviction)**

3 9. Respondent's application is subject to denial under section 4301, subdivision (l), of
4 the Code, by and through section 480, subdivisions (a)(1) and (a)(3), of the Code, in conjunction
5 with California Code of Regulations, title 16, section 1770, in that on or about September 24,
6 2013, in a criminal proceeding entitled *United States of America v. James Barta*, in United States
7 District Court, Northern District of Illinois, Case Number 12cr00487-1, Respondent's sole owner
8 and president, James Barta, was convicted by verdict after trial of violating Title 18 of the United
9 States Code, section 371 (conspiracy to commit offense or to defraud the United States), a felony.

10 The circumstances are as follows:

11 a. From on or about from November 15, 2011, to June 28, 2012, Respondent's
12 sole owner and president, James Barta, offered to pay \$6,500 to an agent of Los Angeles County
13 in exchange for a contract for Respondent to provide pharmaceutical services to Los Angeles
14 County.

15 b. On or about September 24, 2013, James Barta was sentenced as follows:
16 Twenty-one months in federal prison and a fine of \$125,000.00.

17 **SECOND CAUSE FOR DENIAL OF APPLICATION**

18 **(Commission of an act involving moral turpitude, dishonesty, fraud, deceit, or corruption)**

19 10. Respondent's application is subject to denial under section 4301, subdivision (f), of
20 the Code, by and through section 480, subdivisions (a)(2)-(3), of the Code, in that on or about
21 September 24, 2013, in a criminal proceeding entitled *United States of America v. James Barta*, in
22 United States District Court, Northern District of Illinois, Case Number 12cr00487-1,
23 Respondent's sole owner and president, James Barta, was convicted by verdict after trial of
24 violating Title 18 of the United States Code, section 371 (conspiracy to commit offense or to
25 defraud the United States), a felony. The circumstances are more fully set forth in paragraph 9
26 and its subparts.

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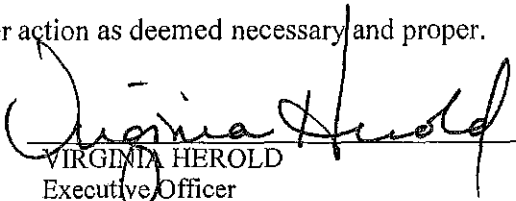
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PRAYER

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 Sav-Rx Prescription Services, [REDACTED] [REDACTED] for a Nonresident Pharmacy Permit; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 3/27/14


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

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