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

11 In the Matter of the Statement of Issues  
12 Against:

Case No. 4897

13 **TYCHICUS ROBERT EDWARDS**

**STATEMENT OF ISSUES**

14 **Pharmacy Technician Registration**  
15 **Applicant**

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 February 13, 2013, the Board of Pharmacy, Department of Consumer  
23 Affairs received an application for a Pharmacy Technician Registration from Tychicus Robert  
24 Edwards (Respondent). On or about February 4, 2013, Tychicus Robert Edwards 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 May 17, 2013.

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## JURISDICTION

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

4. Section 4300 of the Code provides, in pertinent part, that the Board may refuse a license to any applicant guilty of unprofessional conduct. The Board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure.

## STATUTORY PROVISIONS

10 5. Section 475 of the Code states:

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

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

15 (2) Conviction of a crime.

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

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

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

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

26 6. Section 480 of the Code states:

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

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

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

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

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

8 (b) Notwithstanding any other provision of this code, no person shall be denied a  
9 license solely on the basis that he or she has been convicted of a felony if he or she has  
10 obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section  
11 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a  
12 misdemeanor if he or she has met all applicable requirements of the criteria of  
13 rehabilitation developed by the board to evaluate the rehabilitation of a person when  
14 considering the denial of a license under subdivision (a) of Section 482.

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

18 7. Section 482 of the Code states:

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

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

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

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

25 8. Section 493 of the Code states:

26 Notwithstanding any other provision of law, in a proceeding conducted by a board  
27 within the department pursuant to law to deny an application for a license or to suspend  
28 or revoke a license or otherwise take disciplinary action against a person 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 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 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."

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1           9.    Section 4301 of the Code states:

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

6           . . . .

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

10          . . . .

11          (1) The conviction of a crime substantially related to the qualifications, functions,  
12          and duties of a licensee under this chapter. The record of conviction of a violation of  
13          Chapter 13 (commencing with Section 801) of Title 21 of the United States Code  
14          regulating controlled substances or of a violation of the statutes of this state regulating  
15          controlled substances or dangerous drugs shall be conclusive evidence of unprofessional  
16          conduct. In all other cases, the record of conviction shall be conclusive evidence only of  
17          the fact that the conviction occurred. The board may inquire into the circumstances  
18          surrounding the commission of the crime, in order to fix the degree of discipline or, in  
19          the case of a conviction not involving controlled substances or dangerous drugs, to  
20          determine if the conviction is of an offense substantially related to the qualifications,  
21          functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a  
22          conviction following a plea of nolo contendere is deemed to be a conviction within the  
23          meaning of this provision. The board may take action when the time for appeal has  
24          elapsed, or the judgment of conviction has been affirmed on appeal or when an order  
25          granting probation is made suspending the imposition of sentence, irrespective of a  
26          subsequent order under Section 1203.4 of the Penal Code allowing the person to  
27          withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the  
28          verdict of guilty, or dismissing the accusation, information, or indictment.

          . . . .

**REGULATORY PROVISIONS**

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

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

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

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

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

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

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

4 . . . .

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

6 For the purpose of denial, suspension, or revocation of a personal or facility license  
7 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions  
8 Code, a crime or act shall be considered substantially related to the qualifications,  
9 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.

10 **FIRST CAUSE FOR DENIAL OF APPLICATION**

11 **(February 20, 2009 Criminal Conviction for Theft on December 12, 2008)**

12 12. Respondent's application for licensure is subject to denial under section 480,  
13 subdivisions (a)(1) and (a)(3)(A) of the Code in that he was convicted of a crime that is  
14 substantially related to the qualifications, duties, and functions of a registered pharmacy  
15 technician, and would be a ground for discipline under section 4301, subdivision (l) of the Code  
16 for a registered pharmacy technician. The circumstances are as follows:

17 a. On or about February 20, 2009, in a criminal proceeding entitled *People of the*  
18 *State of California vs. Tyhicus Robert Edwards*, in Riverside County Superior Court, case  
19 number RIM526355, Respondent was convicted on his plea of guilty to violating Penal Code  
20 section 490.5, theft of retail merchandise, a misdemeanor.

21 b. As a result of the conviction, on or about February 9, 2009, the court granted  
22 three years summary probation. Respondent was ordered to pay fines and fees, submit to a  
23 Fourth Amendment waiver, comply with probation terms, and to stay away from WalMart.

24 c. The facts that led to the conviction are that on or about the afternoon of December  
25 12, 2008, a loss prevention agent from a Riverside WalMart observed Respondent on closed  
26 circuit surveillance exit the store without paying for a \$50 car CD player. The Riverside Police  
27 Department cited Respondent for theft.

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**SECOND CAUSE FOR DENIAL OF APPLICATION**

**(Commission of Acts Involving Dishonesty, Fraud, or Deceit)**

13. Respondent's application for licensure is subject to denial under section 480, subdivisions (a)(2) and (a)(3)(A) of the Code in that on or about December 12, 2008, he committed acts involving dishonesty, fraud, deceit, conduct that would be a ground for discipline under section 4301, subdivision (f) of the Code for a registered pharmacy technician.

**THIRD CAUSE FOR DENIAL OF APPLICATION**

**(False Statement of Fact Required to be Revealed on His Application for Licensure)**

14. Respondent's application for licensure is subject to denial under section 480, subdivision (c) of the Code in that on or about December 12, 2008, he committed acts involving dishonesty, fraud, deceit, conduct that would be a ground for discipline under section 4301, subdivision (f) of the Code for a registered pharmacy technician.

a. On or about February 4, 2013, Respondent signed his Pharmacy Technician Application certifying under penalty of perjury under the laws of the State of California that his answers in the application were true and correct.

b. Question 7 of the application asked:

Have you ever been convicted of any crime in any state, the USA and its territories, military court or foreign country?

Check the box next to "Yes" if you have ever been convicted or plead guilty to any crime. "Conviction" includes a plea of no contest and any conviction that has been set aside or deferred pursuant to Sections 1000 or 1203.4 of the Penal Code, including infractions misdemeanor, and felonies. You do not need to report a conviction for an infraction with a fine of less than \$300 unless the infraction involved alcohol or controlled substances. You must, however, disclose any convictions in which you entered a plea of no contest and any convictions that were subsequently set aside pursuant or deferred pursuant to sections 1000 or 1203.4 of the Penal Code.

Check the box "No" if you have not been convicted of a crime.

c. In response to the question, Respondent checked the box "No," failing to disclose his February 20, 2009 conviction for violation of Penal Code section 490.5 (theft of retail merchandise) even though the conviction met all criteria for disclosure. This conviction is detailed in the First Cause for Denial, paragraph 12, above, and is incorporated herein by reference.

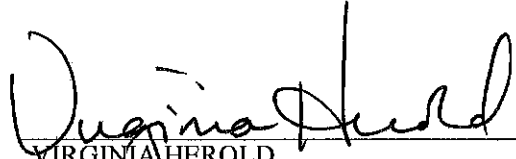
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**PRAYER**

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 Tychicus Robert Edwards for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 3/15/14

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

SD2013705700