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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against: **MARIANNA ALBARYAN** Pharmacy Technician Registration Applicant Respondent.	Case No. 4948 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

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

2. On or about March 1, 2013, the Board of Pharmacy (Board) received an application for a Pharmacy Technician Registration from Marianna Albaryan (Respondent). On or about February 7, 2013, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on July 3, 2013.

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JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 480 states, in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the 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.

. . . .

"(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.

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

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

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

5. Section 490 provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

6. Section 4300 provides in pertinent part, that every license issued by the Boards is subject to discipline, including suspension or revocation.

7. Section 4301 states, in pertinent part:

"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:

. . . .

"(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.

"(p) Actions or conduct that would have warranted denial of a license."

REGULATORY PROVISIONS

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."

FIRST CAUSE FOR DENIAL OF APPLICATION

(Conviction of a Substantially Related Crime)

9. Respondent's application is subject to denial under section 480, subdivision (a)(1), in that Respondent was convicted of a substantially related a crime, as follows:

a. On or about April 16, 2010, Respondent was convicted of one felony count of violating Penal Code section 32 [accessory] in the criminal proceeding entitled *The People of the State of California v. Marianna Albaryan* (Super. Ct. Los Angeles County, 2009, No. PA065087-02.) The Court sentenced Respondent to serve two days in Los Angeles, County Jail and placed her on three years probation, with terms and conditions.

b. The circumstances surrounding the conviction are that on or about July 26, 2009, the Los Angeles Police Department responded to a call of a vehicle colliding with three parked cars. When they arrived on scene, officers asked who the driver of the vehicle was. Respondent

answered, "I was the driver." Further investigation revealed that Respondent was not the driver of the car. Her husband was the one that had been driving the vehicle while under the influence of alcohol. Due to the fact that Respondent's children were in the vehicle at the time of the collision, a felony warrant was issued to Respondent for two counts of violating Penal Code section 273, subdivision (a) [willful cruelty to child] and Penal Code section 32 [accessory].

SECOND CAUSE FOR DENIAL OF APPLICATION

(Knowingly Making a False Statement of Fact)

10. Respondent application is subject to denial under section 480, subdivision (c), in that on or about February 7, 2013, Respondent knowingly made a false statement of fact by failing to disclose her conviction, on her application for licensure. In addition, Respondent signed under penalty of perjury, under the laws of the State of California, that the forgoing was true and correct, on her application for licensure. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraph 9, subparagraphs (a), as though set forth fully.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Acts Warranting Denial of Licensure)

11. Respondent's application is subject to denial under sections 4301, subdivision (p) and 480, subdivisions (a)(3)A) and (a)(3)(B), in that Respondent committed acts which if done by a licentiate of the business and profession in question, would be grounds for suspension or revocation of her license as follows:

a. Respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a pharmacy technician which to a substantial degree evidence her present or potential unfitness to perform the functions authorized by her license in a manner consistent with the public health, safety, or welfare, in violation of sections 4031, subdivision (l), and 490, in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 9, subparagraphs (a) and (b), inclusive, as though set forth fully.

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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 issue a decision:

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

DATED: 5/3/14

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

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