

1 KAMALA D. HARRIS
Attorney General of California
2 MARC GREENBAUM
Supervising Deputy Attorney General
3 CHRISTINA THOMAS
Deputy Attorney General
4 State Bar No. 171168
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2520
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Statement of Issues
Against:

Case No. 5086

12 **MARC CHRISTOPHER BURY**
13 Pharmacy Technician Registration Applicant

STATEMENT OF ISSUES

14
15
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 (Board).

23 2. On or about June 28, 2013, the Board received an application for a Pharmacy
24 Technician Registration from Marc Christopher Bury (Respondent). On or about June 25, 2013,
25 Marc Christopher Bury certified under penalty of perjury to the truthfulness of all statements,
26 answers, and representations in the application. The Board denied the application on December
27 3, 2013.

28 ///

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

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

6 7. Section 4300.1 states:

7 “The expiration, cancellation, forfeiture, or suspension of a board-issued license by
8 operation of law or by order or decision of the board or a court of law, the placement of a license
9 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
10 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
11 proceeding against, the licensee or to render a decision suspending or revoking the license.”

12 8. Section 4301 states, in pertinent part:

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

16

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

1 judgment of conviction has been affirmed on appeal or when an order granting probation is made
2 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
3 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
4 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
5 indictment.

6

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

8 REGULATORY PROVISIONS

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

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

16 FIRST CAUSE FOR DENIAL OF APPLICATION

17 (Conviction of a Substantially Related Crime)

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

20 a. On or about August 10, 2007, after pleading guilty, Respondent was convicted of one
21 felony count of violating Penal Code section 288, subdivision (a) [lewd act upon a child] in the
22 criminal proceeding entitled *The People of the State of California v. Marc Christopher Bury*
23 (Super. Ct. Ventura County, 2007, No. 2007028735FA). The Court sentenced Respondent to
24 serve 3 years in State Prison.

25 b. The circumstance surrounding the conviction are that on or about July 27, 2007,
26 Ventura Police Department received a report of a child molestation involving a 12-year-old
27 victim. Respondent admitted to the Ventura Police Department that he fondled the victim's penis
28

1 and penetrated his anus with his finger. Respondent was subsequently arrested by the Ventura
2 Police Department.

3 **SECOND CAUSE FOR DENIAL OF APPLICATION**

4 **(Act Warranting Denial of Licensure)**

5 11. Respondent's application is subject to denial under sections 4301, subdivision (p) and
6 480, subdivision (a)(3)(A) and (a)(3)(B), in that Respondent committed acts, which if done by a
7 licentiate of the business and profession in question, would be grounds for suspension or
8 revocation of his license as follows:

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

16 **PRAYER**

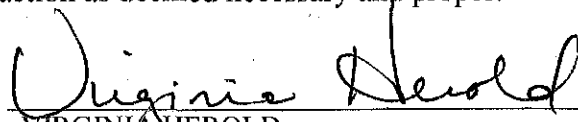
17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
18 and that following the hearing, the Board issue a decision:

19 1. Denying the application of Marc Christopher Bury for a Pharmacy Technician
20 Registration; and

21 2. Taking such other and further action as deemed necessary and proper.

22 DATED: _____

8/12/14



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

27 LA2014511091
28 51460029.docx