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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. 5087

13 **CAMILLE DIANE RUSINIAK**

STATEMENT OF ISSUES

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

16 Respondent.

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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 May 20, 2013, the Board of Pharmacy, Department of Consumer Affairs
23 received an application for a Pharmacy Technician Registration from Camille Diane Rusiniak
24 (Respondent). On or about April 24, 2013, Camille Diane Rusiniak certified under penalty of
25 perjury to the truthfulness of all statements, answers, and representations in the application. The
26 Board denied the application on October 16, 2013.

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JURISDICTION

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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
4 references are to the Business and Professions Code (Code) unless otherwise indicated.

5 4. Section 4300, subdivision (c) of the Code states: "The board may refuse a license to
6 any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a
7 probationary license to any applicant for a license who is guilty of unprofessional conduct and
8 who has met all other requirements for licensure."

STATUTORY PROVISIONS

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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
14 omitting 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
17 intent 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
22 in paragraphs (1) and (2) of subdivision (a).

23 (c) A license shall not be denied, suspended, or revoked on the grounds of a
24 lack of good moral character or any similar ground relating to an applicant's
25 character, 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
4 in question, would be grounds for suspension or revocation of license.

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

8 (b) Notwithstanding any other provision of this code, no person shall be denied
9 a license solely on the basis that he or she has been convicted of a felony if he or she
10 has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with
11 Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
12 convicted of a misdemeanor if he or she has met all applicable requirements of the
13 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
14 person when 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
20 the 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 492 of the Code states:

26 Notwithstanding any other provision of law, successful completion of any
27 diversion program under the Penal Code, or successful completion of an alcohol and
28 drug problem assessment program under Article 5 (commencing with section
23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
agency established under Division 2 ([Healing Arts] commencing with Section 500)
of this code, or any initiative act referred to in that division, from taking disciplinary
action against a licensee or from denying a license for professional misconduct,
notwithstanding that evidence of that misconduct may be recorded in a record
pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program
operated by any agency established under Division 2 (commencing with Section 500)
of this code, or any initiative act referred to in that division.

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1 9. Section 493 of the Code states:

2 Notwithstanding any other provision of law, in a proceeding conducted by a
3 board within the department pursuant to law to deny an application for a license or to
4 suspend or revoke a license or otherwise take disciplinary action against a person who
5 holds a license, upon the ground that the applicant or the licensee has been convicted
6 of a crime substantially related to the qualifications, functions, and duties of the
7 licensee in question, the record of conviction of the crime shall be conclusive
8 evidence of the fact that the conviction occurred, but only of that fact, and the board
9 may inquire into the circumstances surrounding the commission of the crime in order
10 to fix the degree of discipline or to determine if the conviction is substantially related
11 to the qualifications, functions, and duties of the licensee in question.

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

14 10. Section 4301 of the Code states:

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

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20 (h) The administering to oneself, of any controlled substance, or the use of any
21 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
22 dangerous or injurious to oneself, to a person holding a license under this chapter, or
23 to any other person or to the public, or to the extent that the use impairs the ability of
24 the person to conduct with safety to the public the practice authorized by the license.

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26 (j) The violation of any of the statutes of this state, or any other state, or of the
27 United States regulating controlled substances and dangerous drugs.

28 (k) The conviction of more than one misdemeanor or any felony involving the
 use, consumption, or self-administration of any dangerous drug or alcoholic beverage,
 or any combination of those substances.

 (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

1 suspending the imposition of sentence, irrespective of a subsequent order under
2 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
3 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
4 dismissing the accusation, information, or indictment. . . .

5 REGULATORY PROVISIONS

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

7 (a) When considering the denial of a facility or personal license under Section
8 480 of the Business and Professions Code, the board, in evaluating the rehabilitation
9 of the applicant and his present eligibility for licensing or registration, will consider
10 the following criteria:

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

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

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

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

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

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

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

DRUGS

13. Heroin is a Schedule I controlled substance as designated by Health and Safety
Code section 11054, subdivision (c)(11), and is a dangerous drug pursuant to Business and
Professions Code section 4022.

14. Buprenorphine, the generic known commercially as Suboxone, is a Schedule III
controlled substance as designated by Health and Safety Code section 11056, subdivision (e), and
is a dangerous drug pursuant to Business and Professions Code section 4022.

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(October 18, 2006 Criminal Convictions for Possession of a Controlled Substance &**
3 **Controlled Substance Paraphernalia on October 2, 2006)**

4 15. Respondent's application is subject to denial under sections 480, subdivisions (a)(1)
5 and (a)(3)(A) of the Code in that Respondent was convicted of crimes that are substantially
6 related to the qualifications, duties, and functions of a pharmacy technician, and would be a
7 ground for discipline under section 4301, subdivision (l) of the Code for a registered pharmacy
8 technician. The circumstances are as follows:

9 a. On or about October 18, 2006, in a criminal proceeding entitled *People of the*
10 *State of California vs. Camille Diane Rusiniak, aka Camille Diane Rustniak*, in Orange County
11 Superior Court, case number 06WF3011, Respondent pled guilty to violating one felony count
12 and one misdemeanor count of Health and Safety Code section 11350, subdivision (a), possession
13 of a controlled substance, to wit, heroin; and Health and Safety Codes section 11364, possession
14 of controlled substance paraphernalia. As a result of the guilty plea, the court deferred entry of
15 judgment for a period of 18 months, and Respondent was ordered to complete a drug diversion
16 treatment program pursuant to Penal Code section 1000.

17 b. At a hearing on April 18, 2008, Respondent's Penal Code section 1000
18 proceedings were ordered terminated for noncompliance. Sentence was imposed whereby the
19 court granted Respondent three years formal probation and ordered her to complete a drug
20 treatment program pursuant to Penal Code section 1210. Respondent was ordered to abstain from
21 the use or possession of alcohol and drugs, submit to drug testing and a Fourth Amendment
22 waiver, and comply with felony probation terms. On or about October 2, 2009, Respondent was
23 terminated from the Penal Code section 1210 drug treatment program. She was sentenced to
24 serve 270 days in the Orange County Jail, with credit for 79 days, to run concurrent with the
25 sentence imposed in case number 08HF00001, detailed in paragraph 18, below. The jail sentence
26 was stayed while Respondent was in the drug court program. On or about May 27, 2011, the
27 court granted Respondent's motion to dismiss pursuant to Penal Code section 1385 and 1203.4.

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1 c. The facts that led to the convictions are that on or about the evening of October
2 2, 2006, the Huntington Beach Police Department was dispatched to investigate a report of drug
3 activity. Upon arrival, a patrol officer made contact with Respondent and a companion sitting in
4 her parked vehicle. Her friend had been observed hiding a bag under his passenger seat, which
5 was found to contain pieces of aluminum foil with burnt residue on them, and small balloons
6 containing what subsequently tested positive for heroin. A further search of the vehicle revealed
7 14 additional concealed balloons of heroin, and short plastic tubes used to inhale heroin smoke.
8 Respondent was evaluated and found to be under the influence; she was arrested for possession of
9 a controlled substance for sale, and under the influence of a controlled substance.

10 **SECOND CAUSE FOR DENIAL OF APPLICATION**

11 **(February 26, 2007 Criminal Convictions for DUI on January 2, 2007)**

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

17 a. On or about February 26, 2007, in a criminal proceeding entitled *People of the*
18 *State of California vs. Camille Diane Rusiniak, aka Camille Diane Rustniak*, in Orange County
19 Superior Court, case number 07WM01670, Respondent was convicted on her plea of guilty of
20 violating Vehicle Code section 23152, subdivision (a), driving under the influence of
21 alcohol/drugs; and Vehicle Code section 23152, subdivision (b), driving with a blood alcohol
22 concentration (BAC) of .08 percent or more, misdemeanors.

23 b. As a result of the convictions, on or about February 26, 2007, Respondent was
24 granted three years informal probation, and ordered to complete a six-month Level 2 First
25 Offender Program and MADD Victim Impact Panel session, pay fines, fees, and restitution, and
26 comply with the terms of DUI probation. After failing to comply with the alcohol program, on or
27 about December 17, 2007, Respondent's probation was revoked and reinstated. She was
28 sentenced to serve seven days in the Orange County Jail, with credit for seven days. After further

1 probation violations, on December 10, 2010, the court ordered Respondent to serve two days in
2 jail, with credit for two days. At a hearing on May 27, 2011, the court granted Respondent's
3 motion to dismiss. The court set aside the guilty plea and the case was dismissed pursuant to
4 Penal Code section 1203.4.

5 c. The facts that led to the convictions are that shortly after midnight, on or about
6 January 2, 2007, a patrol officer with the Huntington Beach Police Department was travelling
7 behind Respondent's vehicle when she was observed swerving in her lane, and straddling lanes.
8 After conducting a traffic stop, the officer made contact with Respondent who admitted she had
9 been drinking. When Respondent exited her vehicle, she staggered to the sidewalk; she had a
10 strong odor of an alcoholic beverage on her breath, her eyes were bloodshot and watery, and her
11 speech was slurred. Respondent was unable to perform the field sobriety tests as explained and
12 demonstrated by the officer, and she was arrested for driving under the influence. During
13 booking, Respondent provided a blood sample which was analyzed with a BAC of .18 percent.

14 **THIRD CAUSE FOR DENIAL OF APPLICATION**

15 **(January 14, 2008 Criminal Conviction for Possession of a Controlled Substance** 16 **on December 13, 2007)**

17 17. Respondent's application is subject to denial under sections 480, subdivisions (a)(1)
18 and (a)(3)(A) of the Code in that Respondent was convicted of a crime that is substantially related
19 to the qualifications, duties, and functions of a pharmacy technician, and would be a ground for
20 discipline under section 4301, subdivision (l) of the Code for a registered pharmacy technician.
21 The circumstances are as follows:

22 a. On or about January 14, 2008, in a criminal proceeding entitled *People of the*
23 *State of California vs. Camille Diane Rusiniak, aka Camille Diane Rustniak*, in Orange County
24 Superior Court, case number 08HF0001, Respondent was convicted on her plea of guilty of
25 violating Health and Safety Code section 11350, subdivision (a), possession of a controlled
26 substance, to wit, buprenorphine, a felony.

27 b. As a result of the conviction, on or about January 14, 2008, Respondent was
28 granted three years formal probation, and ordered to complete a drug treatment program pursuant

1 to Penal Code section 1210. Respondent was ordered to abstain from the use or possession of
2 alcohol and drugs, submit to drug testing and a Fourth Amendment waiver, and comply with
3 felony probation terms. After multiple hearings on probation violations, on or about October 2,
4 2009, Respondent was terminated from the Penal Code section 1210 drug treatment program.
5 She was sentenced to serve 270 days in the Orange County Jail, with credit for 79 days, to run
6 concurrent with the sentence imposed in case number 06WF3011, detailed in paragraph 16,
7 above. The jail sentence was stayed while Respondent was in the drug court program. On or
8 about May 27, 2011, the court granted Respondent's motion to dismiss pursuant to Penal Code
9 section 1385 and 1203.4.

10 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

11 **(Multiple Drug & Alcohol-Related Convictions)**

12 18. Respondent's application is subject to denial under section 480, subdivision (a)(3)(A)
13 of the Code in that she was convicted of drug and alcohol-related offenses on October 18, 2006,
14 February 26, 2007, and January 14, 2008, as described in paragraphs 16-18, above. Said
15 convictions would be a ground for discipline under section 4301, subdivision (k) of the Code for a
16 registered pharmacy technician.

17 **FIFTH CAUSE FOR DISCIPLINE**

18 **(Violation of State Laws Regulating Controlled Substances)**

19 19. Respondent's application is subject to denial under section 480, subdivision (a)(3)(A)
20 of the Code in that on or about October 2, 2006 and December 13, 2007, she violated the
21 following state laws regulating controlled substances: Health and Safety Code sections 11350,
22 subdivision (a), and 11364, as described in paragraphs 16 and 18, above. Said violations would
23 be grounds for discipline under section 4301, subdivision (j) of the Code for a registered
24 pharmacy technician.

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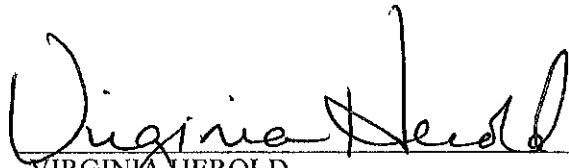
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PRAYER

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 Camille Diane Rusiniak for a Pharmacy Technician Registration;
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

SD2014706563