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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. 5193

13 **MARKQUISTE NATHANIEL MORGAN**

**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 October 18, 2013, the Board of Pharmacy, Department of Consumer  
23 Affairs received an application for a Pharmacy Technician Registration from Markquiste  
24 Nathaniel Morgan (Respondent). On or about October 14, 2013, Markquiste Nathaniel Morgan  
25 certified under penalty of perjury to the truthfulness of all statements, answers, and  
26 representations in the application. The Board denied the application on March 19, 2014.

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1 **JURISDICTION**

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."

7 **STATUTORY PROVISIONS**

8 5. Section 475 of the Code states:

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

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

13 (2) Conviction of a crime.

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

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

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

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

24 6. Section 480 of the Code states:

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

27 (1) Been convicted of a crime. A conviction within the meaning of this  
28 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.

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

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

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

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

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

16 7. Section 482 of the Code states:

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

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

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

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

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by a  
25 board within the department pursuant to law to deny an application for a license or to  
26 suspend or revoke a license or otherwise take disciplinary action against a person who  
27 holds a license, upon the ground that the applicant or the licensee has been convicted  
28 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."

9. Section 4301 of the Code states:

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:



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

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

6 **FIRST CAUSE FOR DENIAL OF APPLICATION**

7 **(January 26, 2009 Criminal Conviction for Burglary)**

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

13 a. On or about January 26, 2009, in a criminal proceeding entitled *People of the*  
14 *State of California vs. Marquiste Nathaniel Morgan*, in San Diego County Superior Court, case  
15 number CE278837, Respondent was convicted on his plea of guilty to violating Penal Code  
16 section 459, burglary, a felony reduced to a misdemeanor pursuant to Penal Code section 17b. As  
17 a result of the plea agreement, the court dismissed additional counts of violating Penal Code  
18 section 476, forgery of financial institution paper, and Penal Code section 475, subdivision (c),  
19 possessing a completed check/money order with the intent to defraud, felonies.

20 b. As a result of the conviction, on or about January 26, 2009, the court granted  
21 Respondent summary probation for three years. Respondent was ordered to submit to a Fourth  
22 Amendment waiver, pay fees and fines, and stay away from the victims.

23 c. The facts that led to the conviction are that on or about December 17, 2007, the  
24 San Diego County Sheriff's Department received a complaint from the office manager of an  
25 electrical contractor in Lakeside. She reported that she had been notified by the contractor's  
26 bank on December 10, 2007 regarding possible check fraud involving the contractor's payroll  
27 account. The bank provided copies of four checks. Three checks were in the amount of \$837.42  
28 each made payable to either Dawane Tousant or Dywane Tousant. The fourth check in the

1 amount of \$790.59 was made payable to Markquiste Morgan. The office manager stated the  
2 checks did not resemble the contractor's checks, however, they had the correct payroll account  
3 number. The office manager's signature had also been forged. On December 17, 2007, the office  
4 manager was contacted by the owner of a security company who stated he was also a victim of  
5 check fraud. He discovered that a fraudulent check for \$632.85 in the name of his company was  
6 cashed by "Dywane Tousant" at a check cashing shop. Upon contacting the former owner of the  
7 shop, it was learned that Dywane Tousant also went by the name "Markquis Morgan." In a  
8 subsequent investigation, Respondent stated that he obtained the checks from a friend whom he  
9 would not identify, and he admitted to cashing the checks because he needed the money.

10 **SECOND CAUSE FOR DENIAL OF APPLICATION**

11 **(Commission of a Dishonest Act)**

12 13. Respondent's application for registration as a pharmacy technician is subject to denial  
13 under sections 480, subdivision (a)(2) of the Code for unprofessional conduct in that in or around  
14 December 2007, Respondent committed acts of dishonesty, fraud and deceit with the intent to  
15 substantially benefit himself, as described in paragraph 12, above.

16 **PRAYER**

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

- 19 1. Denying the application of Markquiste Nathaniel Morgan for a Pharmacy Technician  
20 Registration;  
21 2. Taking such other and further action as deemed necessary and proper.

22  
23 DATED: \_\_\_\_\_

8/8/14



24 VIRGINIA HEROLD  
25 Executive Officer  
26 Board of Pharmacy  
27 Department of Consumer Affairs  
28 State of California  
*Complainant*

SD2014707202