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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
12 Against:

Case No. 5288

13 **MATTHEW JOHN SZALAY**

STATEMENT OF ISSUES

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

Respondent.

17 Virginia Herold ("Complainant") alleges:

18 **PARTIES**

- 19 1. Complainant brings this Statement of Issues solely in her official capacity as the
20 Executive Officer of the Board of Pharmacy (the "Board"), Department of Consumer Affairs.
- 21 2. On or about November 18, 2013, the Board received an application for a Pharmacy
22 Technician registration from Matthew John Szalay ("Respondent"). On or about November 13,
23 2013, Respondent certified under penalty of perjury to the truthfulness of all statements, answers,
24 and representations in the application. The Board denied the application on May 29, 2014.

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1 **STATUTORY PROVISIONS**

2 3. Business and Professions Code ("Code") section 480 states, in pertinent part:

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

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

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

10 4. Code section 492 states, in pertinent part:

11 Notwithstanding any other provision of law, successful completion of any
12 diversion program under the Penal Code, or successful completion of an alcohol and
13 drug problem assessment program under Article 5 (commencing with Section
14 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
15 agency established under Division 2 (commencing with Section 500) of this code, or
16 any initiative act referred to in that division, from taking disciplinary action against a
17 licensee or from denying a license for professional misconduct, notwithstanding that
18 evidence of that misconduct may be recorded in a record pertaining to an arrest . . .

19 5. Code section 4202 states, in pertinent part:

20 (c) The board shall conduct a criminal background check of the applicant to
21 determine if an applicant has committed acts that would constitute grounds for denial
22 of licensure, pursuant to this chapter or Chapter 2 (commencing with Section 480) of
23 Division 1.5.

24 (d) The board may suspend or revoke a license issued pursuant to this section
25 on any ground specified in Section 4301 . . .

26 6. Code section 4301 states, in pertinent part:

27 The board shall take action against any holder of a license who is guilty of
28 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:

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

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

(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,

1 including regulations established by the board or by any other state or federal
2 regulatory agency . . .

3 7. Code section 4022 states, in pertinent part:

4 "Dangerous drug" . . . means any drug or device unsafe for self-use in humans
5 or animals, and includes the following:

6 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
7 without prescription," "Rx only," or words of similar import.

8 (c) Any other drug or device that by federal or state law can be lawfully
9 dispensed only on prescription or furnished pursuant to Section 4006.

10 8. Code section 4060 states, in pertinent part:

11 No person shall possess any controlled substance, except that furnished to a
12 person upon the prescription of a physician, dentist, podiatrist, optometrist,
13 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
14 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
15 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
16 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
17 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
18 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 . . .

19 **DRUG**

20 9. *Marijuana* is a Schedule I controlled substance as designated by Health and Safety
21 Code section 11054(d)(13), and is known to impair motor skills.

22 **CAUSE FOR DENIAL**

23 (Committed Acts Which If Done By a Licentiate Would Be Grounds For Discipline)

24 10. Respondent's application is subject to denial pursuant to Code section 480(a)(3)(A),
25 in that Respondent committed acts that if done by a licentiate would be grounds for discipline, as
26 follows:

27 a. **Code section 4301(j)&(o)**: Respondent self-administered marijuana, a controlled
28 substance, without a valid prescription from a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor, in violation of Health and Safety Code section 11357 and
Code section 4060, as follows:

i. On or about March 7, 2007, a glass pipe, a lighter, and a green leafy substance that
tested positive for marijuana, were found inside Respondent's vehicle, which was parked on the

1 premises of a K-12 school that was in session. Respondent admitted to the investigating officer
2 with the Clovis Police Department that the marijuana was his and that he had smoked marijuana
3 the day before. On or about May 7, 2007, in the case entitled *People v. Matthew John Szalay*,
4 Fresno County Superior Court, Clovis Division, Case No. M07000802, Respondent entered a plea
5 of no contest to violating Health and Safety Code section 11357(b) (possession of marijuana)
6 subject to conditional settlement terms. Respondent complied with the terms of settlement and the
7 plea was withdrawn and the case dismissed on or about November 6, 2007.

8 ii. On or about August 21, 2013, a police officer with the Fresno Police Department
9 attempted to contact Respondent regarding domestic disturbance reported by "V1", the mother of
10 his child. Respondent entered V1's apartment and refused entry to a police officer. After advising
11 Respondent that the door would be opened by force, the police officer started kicking the door.
12 The officer eventually gained entry and observed that Respondent appeared to have blocked the
13 door with furniture and appeared to be extremely intoxicated. When questioned, Respondent
14 stated that he had used marijuana earlier that evening.

15 b. **Code section 4301(h)**: Respondent used a dangerous drug and/or alcoholic beverage
16 to an extent or in a manner as to be dangerous or injurious to himself, to any other person, or to
17 the public, as follows:

18 i. On or about March 1, 2010, in the case entitled *People v. Matthew John Szalay*,
19 Fresno County Superior Court, Clovis Division, Case No. M10000160, Respondent pled nolo
20 contendere to Count 2, for violating Penal Code section 647(f) (public intoxication), which was
21 reduced from a misdemeanor to an infraction. Count 2 stated that on or about December 16,
22 2009, Respondent was under the influence of intoxicating liquor and toluene¹ to an extent that he
23 was unable to exercise care for his own safety or the safety of others. The circumstances of the
24 violation are that on or about December 16, 2009, a police officer with the Clovis Police

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26 ¹ Toluene is an organic solvent used as an inhalant drug for its intoxicating properties. It has
27 the potential to cause severe neurological harm.
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1 Department responded to a report of an individual breaking into a vehicle. The officer found
2 Respondent on a curb near the vehicle. His speech was slow and slurred, the strong odor of an
3 alcoholic beverage emitted from his breath and person; his eyes were bloodshot, red, and watery;
4 he was unsteady on his feet; did not know his whereabouts; and, appeared confused.

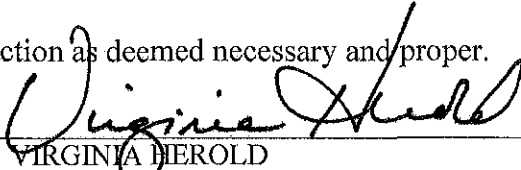
5 ii. On or about May 26, 2010, in response to report of a domestic disturbance, a
6 police officer with the Clovis Police Department interviewed Respondent, who admitted to
7 pushing "M.M." during an altercation between them. The investigating officer observed that
8 M.M.'s shirt was ripped and the back of her head had a laceration. Respondent's blood alcohol
9 level was .186%.

10 **PRAYER**

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

- 13 1. Denying the application of Matthew John Szalay for a pharmacy technician license;
14 and,
15 2. Taking such other and further action as deemed necessary and proper.

16 DATED: 2/10/15


17 VIRGINIA HEROLD
18 Executive Officer
19 Board of Pharmacy
20 Department of Consumer Affairs
21 State of California
22 Complainant

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