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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. 5314

13 **IRENA HOLOVTAEVA**

**STATEMENT OF ISSUES**

14 Pharmacy Technician Registration Applicant

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about February 10, 2014, the Board received an application for a Pharmacy  
23 Technician Registration from Irena Holovtaeva (Respondent). On or about February 3, 2014,  
24 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and  
25 representations in the application. The Board denied the application on August 6, 2014.

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2 **JURISDICTION**

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

6 **STATUTORY PROVISIONS**

7 4. Section 480<sup>1</sup> states, in pertinent part:

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

10 "(1) Been convicted of a crime. A conviction within the meaning of this section means a  
11 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a  
12 board is permitted to take following the establishment of a conviction may be taken when the time  
13 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an  
14 order granting probation is made suspending the imposition of sentence, irrespective of a  
15 subsequent order under the provisions of Section 1203.4 of the Penal Code.

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

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

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

23 "(b) Notwithstanding any other provision of this code, no person shall be denied a license  
24 solely on the basis that he or she has been convicted of a felony if he or she has obtained a

25 <sup>1</sup> This Statement of Issues is based on Code section 480 as it was in effect at the time of the denial. Section  
26 480 was amended effective January 1, 2015, with the addition of the following language: "(c) Notwithstanding any  
27 other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been  
28 dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that  
has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the  
dismissal."

1 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of  
2 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has  
3 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate  
4 the rehabilitation of a person when considering the denial of a license under subdivision (a) of  
5 Section 482."

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

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

11 7. Section 4301 states, in pertinent part:

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

15 . . . .

16 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
17 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
18 whether the act is a felony or misdemeanor or not.

19 . . . .

20 "(l) The conviction of a crime substantially related to the qualifications, functions, and  
21 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
22 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
23 substances or of a violation of the statutes of this state regulating controlled substances or  
24 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
25 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
26 The board may inquire into the circumstances surrounding the commission of the crime, in order  
27 to fix the degree of discipline or, in the case of a conviction not involving controlled substances or  
28 dangerous drugs, to determine if the conviction is of an offense substantially related to the

1 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
2 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
3 of this provision. The board may take action when the time for appeal has elapsed, or the  
4 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
5 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
6 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
7 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
8 indictment.

9 . . . .

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

### 11 REGULATORY PROVISIONS

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

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

### 19 FIRST CAUSE FOR DENIAL OF APPLICATION

#### 20 **(Convictions of Substantially Related Crimes)**

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

23 a. On or about December 10, 2007, after being found guilty by a jury, Respondent was  
24 convicted of one misdemeanor count of violating Penal Code section 487, subdivision (a) [grand  
25 theft], one misdemeanor count of Penal Code section 459 [second degree commercial burglary],  
26 one misdemeanor count of Penal Code section 272, subdivision (a)(1) [contribute to delinquency  
27 of minor], and one misdemeanor count of Penal Code section 273A, subdivision (b) [child  
28 endangerment] in the criminal proceeding entitled *The People of the State of California v. Irena*

1 *Yehouda* (Super. Ct. L.A. County, 2007, No. 6PY0764). The Court sentenced Respondent to  
2 serve 60 days in Los Angeles County Jail and placed her on 48 months probation, with terms and  
3 conditions. On or about March 28, 2013, the Court dismissed the matter pursuant to Penal Code  
4 section 1203.4.

5 b. The circumstances surrounding the conviction are that on or about December 18,  
6 2006, Respondent entered a Fry's Electronics with her brother, a minor, and her four year old son.  
7 A Loss Prevention Officer at Fry's Electronics was monitoring the Closed Circuit Television  
8 when he observed a male juvenile, reach into his jacket pocket, remove a pair of scissors and  
9 reach in to a shelf and cut the blister package of a cellphone. When he finished cutting the  
10 blistered package he removed the cellphone and accessories and handed them to Respondent who  
11 concealed them in her purse. He retrieved a camera from the cart, used the same scissors to cut  
12 the blister package open, removed the camera and concealed it in his jacket pocket. He then  
13 proceeded to remove an Mp3 player from its blister package and handed it to Respondent.  
14 Respondent took the Mp3 player and concealed it in her purse. They repeated this with a second  
15 Mp3 player. They proceeded to the computer department where he selected ink cartridges,  
16 removed them from the package and concealed them in his left jacket pocket. Respondent and  
17 her brother proceeded to the printer aisle where he selected a printer from the display. They made  
18 their way to a register where Respondent purchased the printer but failed to pay for the concealed  
19 merchandise. Both individuals were detained outside of the store. When asked why they took the  
20 merchandise without paying for it they stated it was for themselves and the rest they would be  
21 given as presents. Respondent was subsequently arrested for violating Penal Code section 487,  
22 subdivision (a) [grand theft]. Respondent's husband was contacted to take custody of their 4 year  
23 old son.

24 **SECOND CAUSE FOR DENIAL OF APPLICATION**

25 **(Acts Involving Dishonesty, Fraud, or Deceit)**

26 10. Respondent's application is subject to denial under section 480, subdivision (a)(2), in  
27 that Respondent committed acts involving dishonesty, fraud, or deceit with the intent to  
28 substantially benefit herself, or substantially injure another. The circumstances surrounding this

1 violation are set forth in paragraph 9 subparagraphs (a) and (b), above and are incorporated herein  
2 as though set forth in full.

3 11. Additional circumstances surrounding this violation are as follows. On or about June  
4 27, 2014, Respondent submitted to the Board a signed explanation of the circumstances leading  
5 up to her arrest on December 18, 2006. Respondent was dishonest in her written statement to the  
6 Board, denying the admissions made to police at the time of the incident. In her written  
7 statement, Respondent claimed that the arrest was a misunderstanding, and that she was unaware  
8 that her brother had dropped an electronic item, valued at \$400.00, in her bag. Respondent's  
9 explanation of the incident is inconsistent with the facts set forth in the police report.  
10 Specifically, when asked by the officer why they took the merchandise without paying for it,  
11 Respondent stated it was for themselves and the rest they would be given as presents.

### 12 **THIRD CAUSE FOR DENIAL OF APPLICATION**

#### 13 **(Acts Warranting Denial of Licensure)**

14 12. Respondent's application is subject to denial under sections 4301, subdivision (p), and  
15 480, subdivisions (a)(3)A) and (a)(3)(B), in that Respondent committed acts which if done by a  
16 licentiate of the business and profession in question, would be grounds for suspension or  
17 revocation of her license as follows:

18 a. Respondent was convicted of crimes substantially related to the qualifications,  
19 functions, or duties of a pharmacy technician which to a substantial degree evidence her present  
20 or potential unfitness to perform the functions authorized by her license in a manner consistent  
21 with the public health, safety, or welfare, in violation of sections 4301, subdivision (l), and 490, in  
22 conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,  
23 and by this reference incorporates, the allegations set forth above in paragraph 9, subparagraphs  
24 (a) and (b), inclusive, as though set forth fully.

25 b. Respondent committed acts involving dishonesty, fraud, or deceit, in violation of  
26 section 4301, subdivision (f). Complainant refers to, and by this reference incorporates, the  
27 allegations set forth above in paragraph 9, subparagraphs (a) and (b), and paragraphs 10 and 11, as  
28 though set forth in full.

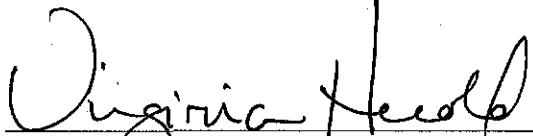
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**PRAYER**

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 Irena Holovtaeva for a Pharmacy Technician Registration;
- and
2. Taking such other and further action as deemed necessary and proper.

DATED: 3/31/15



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

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