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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. 5375

13 **MICHAEL JOVANNY CARABES**

**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 December 23, 2013, the Board of Pharmacy, Department of Consumer  
23 Affairs received an application for a Pharmacy Technician Registration from Michael Jovanny  
24 Carabes (Respondent). On or about December 16, 2013, Michael Jovanny Carabes certified under  
25 penalty of perjury to the truthfulness of all statements, answers, and representations in the  
26 application. The Board denied the application on October 13, 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 references  
4 are to the Business and Professions Code (Code) unless otherwise indicated.

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

9 **STATUTORY PROVISIONS**

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

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

26 6. Section 477 of the Code states:

27 As used in this division:

28 (a) "Board" includes "bureau," "commission," "committee," "department,"  
"division," "examining committee," "program," and "agency."

(b) "License" includes certificate, registration or other means to engage in a  
business or profession regulated by this code.

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1           7.    Section 480<sup>1</sup> of the Code states:

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

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

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

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

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

18                   (b) Notwithstanding any other provision of this code, no person shall be denied a  
19                   license solely on the basis that he or she has been convicted of a felony if he or she has  
20                   obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section  
21                   4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a  
22                   misdemeanor if he or she has met all applicable requirements of the criteria of  
23                   rehabilitation developed by the board to evaluate the rehabilitation of a person when  
24                   considering the denial of a license under subdivision (a) of Section 482.

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

28           8.    Section 482 of the Code states:

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

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

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

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<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 480 was amended effective January 1, 2015, with the addition of the following language: "(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been 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."

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

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:

....

(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.

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**REGULATORY PROVISIONS**

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

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

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

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

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

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

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

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

8 **DRUGS**

9 12. Delta-9-tetrahydrocannabinol (Delta-9-THC), and its major metabolite, 11-  
10 Carboxy-Delta-9-tetrahydrocannabinol, is the primary psychoactive ingredient in marijuana.  
11 Marijuana is a Schedule I controlled substance as designated by Health and Safety Code section  
12 11054(d)(13), and is a dangerous drug pursuant to Business & Professions Code section 4022.

13 13. Clonazepam is a Schedule IV controlled substance as designated by Health and  
14 Safety Code section 11057(d)(7), and is a dangerous drug pursuant to Business and Professions  
15 Code section 4022.

16 37. Lorazepam is a Schedule IV controlled substance as designated by Health and  
17 Safety Code section 11057(d)(16), and is a dangerous drug pursuant to Business and Professions  
18 Code section 4022.

19 **CAUSE FOR DENIAL OF APPLICATION**

20 **(Dangerous Use of Controlled Substances on June 19, 2014)**

21 14. Respondent's application for registration as a pharmacy technician is subject to denial  
22 under section 480(a)(3)(A) of the Code for unprofessional conduct in that he operated a motor  
23 vehicle while impaired by controlled substances on June 19, 2014. Said conduct would be a  
24 ground for discipline under section 4301(h) of the Code for a licensed pharmacy technician. The  
25 circumstances are as follows:

26 a. On the afternoon of June 19, 2014, deputies with the Riverside County Sheriff's  
27 Department were traveling on the I-91 freeway in the number one lane. Respondent was driving in  
28 the number two lane, and slowly drifted into the number one lane, nearly colliding with the  
deputies' vehicle. Believing he may be under the influence, the deputies conducted a traffic stop.  
Upon contact with Respondent, they immediately noticed Respondent appeared to be too impaired

1 to drive based on his slow motor skills and inability to focus. Respondent appeared confused; he  
2 had a dazed expression on his face, and red, glossy eyes. Respondent denied consuming drugs or  
3 alcohol. Respondent agreed to perform field sobriety tests, but they were discontinued when  
4 Respondent was unable to maintain his balance and nearly fell into traffic. Respondent consented  
5 to a search of his vehicle. In the center console of the vehicle, the deputy found a small paper cup  
6 containing a small straw and a white chalky substance which subsequently tested positive for three  
7 grams of cocaine. Respondent was arrested for driving under the influence of drugs, and  
8 possession of cocaine. During booking, Respondent told the deputies that the white powder was  
9 his prescribed medication which he crushes, however, Respondent was unable to state what  
10 medication he was taking. A blood sample taken from Respondent subsequently tested positive  
11 for cannabinoids/THC, Clonazepam, and Lorazepam.

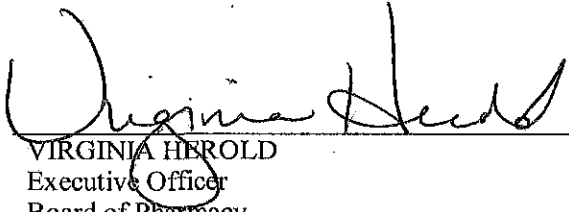
12 b. On August 12, 2014, in a criminal proceeding entitled *People of the State of*  
13 *California vs. Michael Carabes*, in Riverside County Superior Court, case number SWM1407220,  
14 Respondent was charged with violating Vehicle Code section 23152(e), driving under the influence  
15 of a drug, a misdemeanor. That criminal matter is still pending.

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 Michael Jovanny Carabes for a Pharmacy Technician  
20 Registration;  
21 2. Taking such other and further action as deemed necessary and proper.

22  
23 DATED: 6/13/15

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

SD2014708472