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9 **BEFORE THE**
10 **BOARD OF PHARMACY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Statement of Issues
Against:

Case No. 5454

14 **ISRAEL EBENEZER SOWA**

STATEMENT OF ISSUES

15 **Pharmacy Technician Registration**
16 **Applicant**

17 Respondent.

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 1, 2014, the Board of Pharmacy, Department of Consumer Affairs
23 received an application for a Pharmacy Technician Registration from Israel Ebenezer Sowa
24 (Respondent). On or about April 7, 2014, Israel Ebenezer Sowa certified under penalty of perjury
25 to the truthfulness of all statements, answers, and representations in the application. The Board
26 denied the application on February 20, 2015.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

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

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
24 of good moral character or any similar ground relating to an applicant's character,
25 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, 1203.4a, or 1203.41 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 in
4 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 crime
6 or act is substantially related to the qualifications, functions, or duties of the business or
7 profession for which application is made.

8 (b) Notwithstanding any other provision of this code, a person shall not be denied
9 a license solely on the basis that he or she has been convicted of a felony if he or she has
10 obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section
11 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a
12 misdemeanor if he or she has met all applicable requirements of the criteria of
13 rehabilitation developed by the board to evaluate the rehabilitation of a person when
14 considering the denial of a license under subdivision (a) of Section 482.

15 (c) Notwithstanding any other provisions of this code, a person shall not be denied
16 a license solely on the basis of a conviction that has been dismissed pursuant to Section
17 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that
18 has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code
19 shall provide proof of the dismissal.

20 (d) A board may deny a license regulated by this code on the ground that the
21 applicant knowingly made a false statement of fact required to be revealed in the
22 application for the license.

23 7. Section 493 of the Code states:

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

8. 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:

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

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

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11 (l) The conviction of a crime substantially related to the qualifications, functions,
12 and duties of a licensee under this chapter. The record of conviction of a violation of
13 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
14 regulating controlled substances or of a violation of the statutes of this state regulating
15 controlled substances or dangerous drugs shall be conclusive evidence of unprofessional
16 conduct. In all other cases, the record of conviction shall be conclusive evidence only of
17 the fact that the conviction occurred. The board may inquire into the circumstances
18 surrounding the commission of the crime, in order to fix the degree of discipline or, in
19 the case of a conviction not involving controlled substances or dangerous drugs, to
20 determine if the conviction is of an offense substantially related to the qualifications,
21 functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a
22 conviction following a plea of nolo contendere is deemed to be a conviction within the
23 meaning of this provision. The board may take action when the time for appeal has
24 elapsed, or the judgment of conviction has been affirmed on appeal or when an order
25 granting probation is made suspending the imposition of sentence, irrespective of a
26 subsequent order under Section 1203.4 of the Penal Code allowing the person to
27 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the
28 verdict of guilty, or dismissing the accusation, information, or indictment.

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REGULATORY PROVISIONS

9. 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).

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

3 (5) Evidence, if any, of rehabilitation submitted by the applicant.
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5 10. California Code of Regulations, title 16, section 1770 states:

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

10 **FIRST CAUSE FOR DENIAL OF APPLICATION**

11 **(February 6, 2008 Criminal Conviction for Vandalism on February 2, 2008)**

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

17 a. On February 6, 2008, in a criminal proceeding entitled *People of the State of*
18 *California vs. Israel Ebenezer Sowa*, in Orange County Superior Court, case number
19 08CM00916, Respondent was convicted on his plea of guilty to violating Penal Code section 594,
20 subdivisions (a) and (b)(1), vandalism with damage over \$400, a felony which the court agreed to
21 reduce to a misdemeanor when Respondent completed graffiti removal and payment of fines.

22 b. As a result of the conviction, the court sentenced Respondent to serve 20 days
23 in the Orange County Jail, with pre-custody credit for six days, to be served with the CalTrans
24 physical labor program. Respondent was granted probation for three years. Under the
25 Graffiti/Tagger Terms and Conditions of Probation, Respondent was ordered to complete graffiti
26 removal for 200 hours, not own or possess or associate with anyone in possession of any paints,
27 markers or tools used to mark or deface a surface, not communicate with, accompany, or
28 associate with taggers, not wear or possess any article of clothing to signify membership in a

1 tagger group, and to pay restitution to reimburse the victim business for the costs associated with
2 graffiti removal. Respondent's driving privileges were suspended for one year. Respondent was
3 further ordered to pay fees and fines, and to stay away from the victim/business. On March 27,
4 2008, the court revoked Respondent's probation after he was cited and released by the Orange
5 Police Department for being in possession of a 10 oz. can of aerosol paint, he was accompanied
6 by another tagger, and he did not possess a valid picture identification to avoid disclosing he was
7 on probation. Respondent failed to appear at his probation violation arraignment hearing and a
8 bench warrant was issued for his arrest on May 12, 2008. Respondent's probation was reinstated
9 on the same terms. At a hearing on July 10, 2008, the court reduced probation to informal for the
10 balance of the term

11 c. The facts that led to the conviction are that on the evening of February 2, 2008,
12 officers with the Santa Ana Police Department were patrolling the Westend District when they
13 observed Respondent and three males facing the east wall of a grocery store. As the officers
14 approached, the officers observed that Respondent and another male held cans of aerosol spray
15 paint. When the officers directed their spotlight, Respondent and his accomplice ran
16 approximately 15 feet and threw their cans of spray paint over a chain link fence. Upon contact
17 with the four individuals, the officers could smell a strong odor of aerosol paint in the immediate
18 area. A white truck parked in the store's parking lot was freshly spray-painted with the letters
19 "OCDX3" on its driver's side door and the roof. "OCDX3 Drifters," the tag for an Orange
20 County street gang, and the monikers "Demon" and "Psycho" had been spray-painted on the east
21 wall of the business. On the west wall, "OCDX3" and the monikers "Dream Killers" had been
22 spray-painted on the west wall of the business. All of the spray paint was still wet, indicating it
23 had been recently applied. The officers retrieved the two cans of spray paint from where
24 Respondent and his friend had thrown them. Inside a sport utility vehicle owned by Respondent
25 the officers found a third can of spray paint and a jumbo permanent marker. The car stereo was
26 playing loudly. All four individuals were arrested for felony vandalism and participating in a
27 street gang. During questioning, Respondent told an investigator that he was an active member of
28 the Orange County Drifters gang.

1 SECOND CAUSE FOR DENIAL OF APPLICATION

2 **(June 13, 2008 Criminal Conviction for Possession of Graffiti Tools on March 14, 2008)**

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

8 a. On June 13, 2008, in a criminal proceeding entitled *People of the State of*
9 *California vs. Israel Ebenezer Sowa*, in Orange County Superior Court, case number
10 08CM00916, Respondent was convicted on his plea of guilty to violating Penal Code section
11 594.2, subdivision (a), possession of graffiti tools, a misdemeanor. Pursuant to a plea agreement,
12 the court dismissed an additional count of violating Penal Code section 853.7, failure to appear.

13 b. As a result of the conviction, the court suspended sentence, and Respondent
14 was ordered to pay fees and fines.

15 c. The facts that led to the conviction are that 40 days after his previous arrest, on
16 March 14, 2008, officers with the Orange Police Department were investigating an alarm at a
17 commercial property when they observed Respondent and two friends walking through the
18 parking lot. All three males were wearing dark clothing and gloves. The officers made contact
19 with the three individuals; none of them were carrying identification. They told the officers that
20 their vehicle had run out of gas, so they were walking to a friend's house. When Respondent
21 identified himself as the owner of the vehicle, he admitted he lied about his identification because
22 he did not want to admit he was on probation for vandalism. Inside the beltline of Respondent's
23 pants the officer found an aerosol can of paint, and a permanent marker inside Respondent's front
24 pants pocket. During questioning, Respondent admitted that they had not run out of gas; he
25 parked in the lot because they intended to tag properties in the area. All three were arrested for
26 possession of graffiti tools, cited, and released with a promise to appear on May 12, 2015.

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1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 **(June 10, 2009 Criminal Convictions for DUI on March 21, 2009)**

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

8 a. On June 10, 2009, in a criminal proceeding entitled *People of the State of*
9 *California vs. Israel Ebenezer Sowa*, in Orange County Superior Court, case number
10 09CM05080, Respondent was convicted on his plea of guilty to violating Vehicle Code section
11 23152, subdivision (a), driving under the influence of drugs/alcohol; and Vehicle Code section
12 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent or more,
13 misdemeanors.

14 b. As a result of the conviction, Respondent was granted informal probation for
15 three years, and sentenced to serve five days in the Orange County Jail, to be served in the Cal
16 Trans/Physical Labor program. The court further ordered Respondent to complete a three-month
17 Level 1 First Offender Alcohol Program and a MADD Victim Impact Panel session, pay fees and
18 fines, and comply with DUI probation terms. On November 12, 2009, Respondent's probation
19 was revoked for failure to completed the MADD session. The court reinstated probation on the
20 same terms. On April 29, 2010, the court revoked Respondent's probation for failure to pay
21 restitution to the victim. The court reinstated Respondent's probation, and modified its terms to
22 permit Respondent to complete eight days of community service in lieu of fines.

23 c. The facts that led to the convictions are that on the evening of March 21, 2009,
24 a patrol officer with the Santa Ana Police Department was stopped at an intersection observing
25 vehicular traffic when he observed a vehicle attempting to make a left turn. As the vehicle
26 entered the intersection, it suddenly stopped to avoid colliding with another vehicle who had gone
27 through the intersection against a red light. Respondent, who was the fourth vehicle in line, rear-
28 ended the car in front of him. The officer had Respondent and the victim move to a parking lot

1 near the intersection where they were both interviewed. When speaking to Respondent, the
2 officer observed that he had a distinct odor of alcohol on his person, and his eyes were bloodshot
3 and watery. A second officer evaluated Respondent and conducted a series of field sobriety tests
4 which Respondent was unable to complete as explained and demonstrated by the officer.
5 Respondent provided two breath samples which were analyzed by the preliminary alcohol
6 screening device with a BAC of 0.162 and 0.164 percent, respectively. Respondent was arrested
7 for driving under the influence. During booking, Respondent provided a blood sample that was
8 analyzed with a BAC of 0.14 percent.

9 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

10 **(Dangerous Use of Alcohol)**

11 14. Respondent's application for licensure is subject to denial under section 480,
12 subdivision (a)(3)(A) of the Code in that on March 21, 2009, as described in paragraph 13, above,
13 he used alcohol in a manner that was dangerous and injurious to himself and to others when he
14 drove a vehicle while impaired by alcohol and caused a collision, which would be a ground for
15 discipline under section 4301, subdivision (h) of the Code for a registered pharmacy technician.

16 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

17 **(September 28, 2011 Criminal Convictions for Making Criminal Threats & Vandalism**
18 **on September 26, 2011)**

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

24 a. On September 28, 2011, in a criminal proceeding entitled *People of the State of*
25 *California vs. Israel Ebenezer Sowa*, in Orange County Superior Court, case number
26 11CM13414, Respondent was convicted on his plea of guilty to violating Penal Code section 422,
27 making criminal threats (Count 1), and Penal Code section 594, subdivisions (a) and (b)(2)(A),
28 vandalism under \$400 (Count 2), misdemeanors.

1 a. On April 9, 2014, in a criminal proceeding entitled *People of the State of*
2 *California vs. Israel Ebenezer Sowa*, in Orange County Superior Court, case number
3 14CM03000, Respondent was convicted on his plea of guilty to violating Vehicle Code section
4 20002, subdivision (a), hit and run with property damage, a misdemeanor.

5 b. As a result of the conviction, Respondent was granted informal probation for
6 three years, and sentenced to serve 10 days in the Orange County Jail, or 10 days in the CalTrans
7 physical labor. Respondent was further ordered to pay fees, fines, and restitution to the victim.

8 c. The facts that led to the conviction are that at approximately 3:00 in the
9 morning on February 2, 2014, the Santa Ana Police Department was dispatched to investigate a
10 hit and run in a residential neighborhood. The officers observed a Dodge Ram truck parked along
11 the curblineline. A Toyota Camry was lodged under the truck's rear fender and had major front end
12 damage. The Camry was registered to Respondent's mother, however, when they went to the
13 registered address a block from the collision, no one answered the door. A witness stated that she
14 immediately after the collision, she saw two males running away from the area. The next day, a
15 family member advised the Santa Ana Police Department that Respondent was the driver. On
16 February 6, 2014, Respondent went to the police department and admitted he had been driving
17 the Camry and caused the collision. Respondent told the officer that he had no valid reason for
18 leaving the scene except that he panicked and his first instinct was to run home, which was only a
19 block away. Respondent was arrested and cited for hit and run driving with property damage.

20 **SEVENTH CAUSE FOR DENIAL OF APPLICATION**

21 **(Dishonesty – Making a False Statement of Fact Required to Be Revealed on Application)**

22 17. Respondent's application is subject to denial under Code section 480, subdivisions
23 (a)(2), (a)(3)(A), and (d) in that he made false statements of fact required to be revealed in his
24 application to the Board. Said conduct would be a ground for discipline under section 4301,
25 subdivision (f) of the Code for a registered pharmacy technician. The circumstances are as
26 follows:

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1 a. Respondent signed his Pharmacy Technician Application certifying under
2 penalty of perjury under the laws of the State of California that his answers in the application
3 were true and correct. He dated the application April 7, 2014, however, the Board did not receive
4 the application until May 1, 2014. Along with his Application, Respondent enclosed an
5 "Affidavit of Completed Coursework or Graduation for Pharmacy Technician" from Everest
6 College dated April 15, 2014.

7 b. Question Number 7 of the Application asked:

8 Have you ever been convicted of any crime in any state, the USA and its territories,
9 military court or foreign country?

10 Check the box next to "YES" if you have ever been convicted or plead guilty to any
11 crime. "Conviction" includes a plea of no contest and any conviction that has been set
12 aside or deferred pursuant to Sections 1000 or 1203.4 of the Penal Code, including
13 infractions, misdemeanor, and felonies. You do not need to report a conviction for an
14 infraction with a fine of less than \$300 unless the infraction involved alcohol or
15 controlled substances. You must, however, disclose any convictions in which you
16 entered a plea of no contest and any convictions that subsequently set aside pursuant or
17 deferred pursuant to sections 1000 or 1203.4 of the Penal Code.

18 Check the box next to "NO" if you have not been convicted of a crime.

19 You may wish to provide the following information in order to assist in the processing of
20 your application: descriptive explanation of the circumstances surrounding the
21 conviction (ie. Dates and locating of incident and all circumstances surrounding the
22 incident.) If documents were purged by the arresting agency and/or court, a letter of
23 explanation from these agencies is required.

24 Failure to disclose a disciplinary action or conviction may result in the license being
25 denied or revoked for falsifying the application. Attach additional sheets if necessary.

26 c. In response to the question, Respondent checked the box "YES." Respondent
27 declared the following convictions: (1) *People vs. Sowa*, June 13, 2008, Orange County Superior
28 Court, case number 08CM00916 (paragraph 12, above); (2) *People vs. Sowa*, June 10, 2009,
Orange County Superior Court, case number 09CM05080 (paragraph 13, above); (3) *People vs.*
Israel Ebenezer Sowa, September 28, 2011, Orange County Superior Court, case number
11CM13414 (paragraph 15, above).

d. Respondent failed to declare his February 6, 2008 conviction for felony
vandalism (paragraph 11, above) even though the conviction met all criteria for disclosure. The
Board also alleges that Respondent dated his Application April 7, 2014 so as to avoid declaring

1 his April 9, 2014 criminal conviction for hit and run driving, as described in paragraph 16, above.
2 Because Respondent's Application package included a document dated April 15, 2014, and
3 because the Board did not receive Respondent's application package until May 1, 2014, the
4 Board alleges that Respondent's failure to declare the April 9, 2014 conviction on his Application
5 was intentional, and demonstrates dishonesty and deceit.

6 **PRAYER**

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

- 9 1. Denying the application of Israel Ebenezer Sowa for a Pharmacy Technician
10 Registration;
11 2. Taking such other and further action as deemed necessary and proper.

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14 DATED: 7/8/15


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

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