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

12 In the Matter of the Statement of Issues
Against:

Case No. 5804

13 **LENA LENE E ESPINOZA**

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
21 official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of
22 Consumer Affairs.

23 2. On May 11, 2015, the Board received an application for a Pharmacy Technician
24 Registration from Lena Lenee Espinoza (Respondent). On May 7, 2015, Lena Lenee Espinoza
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 January 22, 2016.

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1 **JURISDICTION**

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

5 4. Code section 4300, subdivision (c) states:

6 The board may refuse a license to any applicant guilty of unprofessional conduct.

7 **STATUTORY PROVISIONS**

8 5. Code section 475 states, in pertinent part:

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

11 (1) Knowingly making a false statement of material fact, or
12 knowingly 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
15 with the intent to substantially benefit himself or another, or substantially injure
16 another.

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

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21 6. Code section 480 states, in pertinent part:

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

24 (1) Been convicted of a crime. A conviction within the meaning of
25 this section means a plea or verdict of guilty or a conviction following a plea of
26 *nolo contendere*. Any action that a board is permitted to take following the
27 establishment of a conviction may be taken when the time for appeal has elapsed,
28 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.

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

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7. Code section 482 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.

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

8. Code section 493 states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted 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. Code section 4060 states:

A person shall not possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the possession of any controlled substance by a manufacturer, wholesaler, third-party logistics provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, if in stock in containers correctly labeled with the name and address of the supplier or producer.

This section does not authorize a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

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10. Code section 4301 states, in pertinent part:

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:

...

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

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

...

(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.

...

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of *nolo contendere* is deemed to be a conviction within the meaning of this provision. The board may take action 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 section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

...

(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, including regulations established by the board or by any other state or federal regulatory agency.

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1 **REGULATORY PROVISIONS**

2 11. California Code of Regulations, title 16, section 1768 states:

3 (a) Where the board has denied an application for a license, the earliest
4 date on which the applicant may reapply for a license is one year after the
effective date of the denial.

5 (b) All competent evidence of rehabilitation presented will be considered
6 upon a reapplication. The board shall use the criteria listed in section 1769 when
considering evidence of rehabilitation.

7 12. California Code of Regulations, title 16, section 1769 states, in pertinent part:

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

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

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

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

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

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

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20 13. California Code of Regulations, title 16, section 1770 states:

21 For the purpose of denial, suspension, or revocation of a personal or
22 facility license pursuant to Division 1.5 (commencing with section 475) of the
23 Business and Professions Code, a crime or act shall be considered substantially
24 related to the qualifications, 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.

25 **DRUG**

26 14. Vicodin is a brand name for acetaminophen and hydrocodone bitartrate, a
27 Schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision
28 (e), and a dangerous drug under Business and Professions Code section 4022.

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(September 18, 2006 Conviction for Driving without a License on September 11, 2005)**

3 15. Respondent's application for a Pharmacy Technician Registration is subject to
4 denial under Code sections 475, subdivision (a)(2) and 480, subdivisions (a)(1) and (a)(3)(A) in
5 that she was convicted of crimes that are substantially related to the qualifications, duties, and
6 functions of a registered pharmacy technician, which would also be a ground for discipline for a
7 registered pharmacy technician under Code section 4301, subdivision (l). The circumstances are
8 as follows:

9 a. On September 18, 2006, in a criminal proceeding entitled *The People of*
10 *the State of California vs. Lena Lenee Espinoza*, in Orange County Superior Court, North Justice
11 Center, Criminal Division Case Number BP143028, Respondent was convicted on her plea of
12 guilty of violating Vehicle Code (VC) sections 12500, subdivision (a), driving without a valid
13 driver's license, a misdemeanor, and 16028, subdivision (a), failure to provide evidence of
14 financial responsibility for the vehicle and 27150, subdivision (a), failure to maintain an
15 adequate muffler in constant operation, both infractions.

16 b. As a result of the convictions, on September 18, 2006, Respondent was
17 sentenced to one year informal probation under certain terms and conditions. Respondent was
18 ordered to pay fines, fees, assessments, and restitution. On June 4, 2008, Respondent was
19 convicted in Case Number 08NM06642, detailed in paragraph 16, below, and was found in
20 violation of the terms of her probation in Case Number BP143028. As a result of the violation,
21 Respondent was sentenced to 30 days in the Orange County Jail, which was stayed pending no
22 further probation violations. Respondent filed a Petition for Relief under PC sections 1203.4 and
23 1203.4a. On December 22, 2011, upon hearing Respondent's petition, Respondent's
24 misdemeanor conviction for violation of VC section 12500, subdivision (a), was set aside, and
25 the charge dismissed based on Respondent's fulfillment of the conditions of her probation during
26 the entire period of probation.

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1 c. The facts that led to the convictions are that on September 11, 2005, while
2 driving in the area of Orangethorpe Avenue and Stanton Avenue in Buena Park, California,
3 Respondent was stopped by an officer from the Buena Park Police Department for failure to
4 maintain an adequate muffler in constant operation. During the enforcement stop, Respondent
5 was found not in possession of a valid driver's license. Respondent also failed to provide evidence of
6 financial responsibility for the vehicle.

7 **SECOND CAUSE FOR DENIAL OF APPLICATION**

8 **(June 4, 2008 Conviction for Possession of a Controlled Substance on April 26, 2008)**

9 16. Respondent's application for a Pharmacy Technician Registration is subject to
10 denial under Code sections 475, subdivision (a)(2) and 480, subdivisions (a)(1) and (a)(3)(A) in
11 that she was convicted of crimes that are substantially related to the qualifications, duties, and
12 functions of a registered pharmacy technician, which would also be a ground for discipline for a
13 registered pharmacy technician under Code section 4301, subdivision (l). The circumstances are
14 as follows:

15 a. On June 4, 2008, in a criminal proceeding entitled *The People of the State*
16 *of California vs. Lena Lenee Espinoza*, in Orange County Superior Court, North Justice Center,
17 Criminal Division Case Number 08NM06642, Respondent was convicted on her plea of guilty of
18 violating Code section 4060, possession of a controlled substance, without the prescription of a
19 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, a misdemeanor.

20 b. As a result of the conviction, on June 4, 2008, Respondent was sentenced
21 to three years informal probation under certain terms and conditions. Respondent was ordered to
22 pay fines, fees, restitution, and assessments. Respondent filed a Petition for Relief under PC
23 sections 1203.4 and 1203.4a. On December 22, 2011, upon hearing Respondent's petition,
24 Respondent's misdemeanor conviction for violation of Code section 4060 was set aside, and the
25 charge dismissed based on Respondent's fulfillment of the conditions of her probation during the
26 entire period of probation.

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1 c. The facts that led to the convictions are that on April 26, 2008,
2 Respondent drove a car with tinted windows at 50 miles per hour in a 35 miles per hour speed
3 zone of Ash Avenue in Fullerton, California. An officer from the Fullerton Police Department
4 initiated an enforcement stop. During a search incident to the enforcement stop, the officer found
5 in Respondent's purse a prescription bottle with nine Vicodin pills.

6 **THIRD CAUSE FOR DENIAL OF APPLICATION**

7 **(Act If Done By Licentiate – Violation of Drug Regulation Laws)**

8 17. Respondent's application for a Pharmacy Technician Registration is subject to
9 denial under Code section 480, subdivision (a)(3)(A) in that on April 26, 2008, as detailed in
10 paragraph 17, above, she violated Code section 4060. Respondent possessed a controlled
11 substance, without the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
12 naturopathic doctor, a misdemeanor violating a statute of the State of California regulating
13 controlled substances and dangerous drugs, which would be a ground for discipline for a
14 registered pharmacy technician under Code section 4301, subdivision (j).

15 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

16 **(Act If Done By Licentiate – Violation of Pharmacy Laws)**

17 18. Respondent's application for a Pharmacy Technician Registration is subject to
18 denial under Code section 480, subdivision (a)(3)(A) in that on April 26, 2008, as detailed in
19 paragraph 17, above, she violated Code section 4060, a pharmacy law of the State of California
20 regulating controlled substances and dangerous drugs, which would be a ground for discipline
21 for a licensed pharmacy technician under Code section 4301, subdivision (o).

22 **MATTERS IN AGGRAVATION**

23 **FIRST MATTER IN AGGRAVATION**

24 **(Act If Done By Licentiate – Commission of Acts Involving Moral Turpitude, Dishonesty,
25 Fraud, Deceit, or Corruption)**

26 19. Respondent's application for a Pharmacy Technician Registration submitted on
27 July 21, 2009, was denied on August 12, 2010, under Code section 480, subdivisions (a)(2) and
28 (a)(3)(A) in that she committed acts that involve moral turpitude, dishonesty, fraud, deceit, and

1 corruption, which would be grounds for discipline for a registered pharmacy technician under
2 Code section 4301, subdivision (f). Respondent committed dishonesty when she submitted an
3 application for a Pharmacy Technician Registration on July 21, 2009, without disclosing her
4 prior convictions in 2006 and 2008, as described in paragraphs 16 and 17, above, which are
5 incorporated by reference.

6 **SECOND MATTER IN AGGRAVATION**

7 **(Act If Done By Licentiate - Knowingly Making or Signing Any Certificate or Other** 8 **Document That Falsely Represents the Existence or Nonexistence of a State of Facts)**

9 20. Respondent's application for a Pharmacy Technician Registration submitted on
10 July 21, 2009, was denied on August 12, 2010, under Code section 480, subdivisions (a)(2) and
11 (a)(3)(A) in that she knowingly and falsely represented the nonexistence of a state of facts in her
12 application. Respondent certified under penalty of perjury to the truthfulness of all statements,
13 answers, and representations in the application. However, Respondent failed to report her two
14 prior convictions in 2006 and 2008, as described in paragraphs 16 and 17, above, which are
15 incorporated by reference. Respondent's false representations would also be grounds for
16 discipline for a registered pharmacy technician under Code section 4301, subdivision (g).

17 **THIRD MATTER IN AGGRAVATION**

18 **(Act If Done By Licentiate – Commission of Acts Involving Moral Turpitude, Dishonesty,** 19 **Fraud, Deceit, or Corruption)**

20 21. Respondent's application for a Pharmacy Technician Registration submitted on
21 September 25, 2012, was denied on March 1, 2013, under Code section 480, subdivisions (a)(2)
22 and (a)(3)(A) in that she committed acts that involve moral turpitude, dishonesty, fraud, deceit,
23 and corruption, which would be grounds for discipline for a registered pharmacy technician
24 under Code section 4301, subdivision (f). Respondent committed dishonesty when she submitted
25 an application for a Pharmacy Technician Registration on September 25, 2012, without
26 disclosing her prior application denial on August 12, 2010, described in paragraphs 19 and 20,
27 above, and prior convictions in 2006 and 2008, as detailed in paragraphs 16 and 17, above,
28 which are incorporated by reference.

1 **FOURTH MATTER IN AGGRAVATION**

2 **(Act If Done By Licentiate - Knowingly Making or Signing Any Certificate or Other**
3 **Document That Falsely Represents the Existence or Nonexistence of a State of Facts)**

4 22. Respondent's application for a Pharmacy Technician Registration submitted on
5 September 25, 2012, was denied on March 1, 2013, under Code section 480, subdivisions (a)(2)
6 and (a)(3)(A) in that she knowingly and falsely represented the nonexistence of a state of facts in
7 her application. Respondent certified under penalty of perjury to the truthfulness of all
8 statements, answers, and representations in the application. However, Respondent failed to report
9 her prior application denial on August 12, 2010, described in paragraphs 19 and 20, above, and
10 prior convictions in 2006 and 2008, as detailed in paragraphs 16 and 17, above, which are
11 incorporated by reference. Respondent's false representations would also be grounds for
12 discipline for a registered pharmacy technician under Code section 4301, subdivision (g).

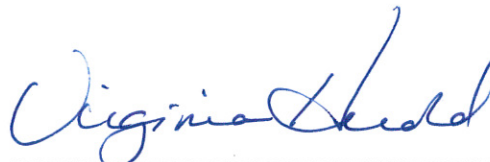
13 **PRAYER**

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

- 16 1. Denying the application of Lena Lenee Espinoza for a Pharmacy Technician
17 Registration; and
18 2. Taking such other and further action as deemed necessary and proper.

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21 DATED: _____

6/10/16



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

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