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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 Against:  
12 **ALEX DEMOYE HOWARD**  
13 **Pharmacy Technician Registration Applicant**  
14  
15 Respondent.

Case No. 5871

**STATEMENT OF ISSUES**

16 Complainant alleges:

17 **PARTIES**

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

21 2. On or about November 2, 2015, the Board received an application for a Pharmacy  
22 Technician Registration from Alex Demoye Howard (Respondent). On or about May 24, 2015,  
23 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and  
24 representations in the application. Because the application was signed more than 60 days prior to  
25 its receipt by the Board, Respondent was directed to re-submit his application. In his second  
26 application dated December 31, 2015, Respondent certified under penalty of perjury to the  
27 truthfulness of all statements, answers, and representations in the application. The Board denied  
28 the application on May 20, 2016.

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. Section 4300, subdivision (c) of the Code states:

6 The board may refuse a license to any applicant guilty of unprofessional conduct.  
7 The board may, in its sole discretion, issue a probationary license to any applicant for a  
8 license who is guilty of unprofessional conduct and who has met all other requirements  
9 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.

14 (2) Conviction of a crime.

15 (3) Commission of any act involving dishonesty, fraud or deceit with the intent  
16 to substantially benefit himself or another, or substantially injure another.

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

18 (b) Notwithstanding any other provisions of this code, the provisions of this  
19 division shall govern the suspension and revocation of licenses on grounds specified in  
20 paragraphs (1) and (2) of subdivision (a) .

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

24 6. Section 477 of the Code states:

25 As used in this division:

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

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

27 ///

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1           7.       Section 480 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, 1203.4a, or 1203.41 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, a person shall not 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) Notwithstanding any other provisions of this code, a person shall not be denied a  
26 license solely on the basis of a conviction that has been dismissed pursuant to Section  
27 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that  
28 has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code  
shall provide proof of the dismissal.

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

22           8.       Section 482 of the Code states:

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

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

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

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

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1           9.    Section 493 of the Code states:

2                   Notwithstanding any other provision of law, in a proceeding conducted by a board  
3                   within the department pursuant to law to deny an application for a license or to suspend  
4                   or revoke a license or otherwise take disciplinary action against a person who holds a  
5                   license, upon the ground that the applicant or the licensee has been convicted of a crime  
6                   substantially related to the qualifications, functions, and duties of the licensee in question,  
7                   the record of conviction of the crime shall be conclusive evidence of the fact that the  
8                   conviction occurred, but only of that fact, and the board may inquire into the  
9                   circumstances surrounding the commission of the crime in order to fix the degree of  
10                  discipline or to determine if the conviction is substantially related to the qualifications,  
11                  functions, and duties of the licensee in question.

12                   As used in this section, "license" includes "certificate," "permit," "authority," and  
13                   "registration."

14           10.    Section 4301 of the Code states:

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

19                   ...

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

23                   ...

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

42           ///  
43           ///  
44           ///

1 **REGULATORY PROVISIONS**

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

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

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

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

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

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

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

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

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

25 **FIRST CAUSE FOR DENIAL OF APPLICATION**

26 **(December 2, 2008 Criminal Conviction for First Degree Burglary)**

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

a. On or about November 20, 2008, after failing to appear at his felony  
arraignment, Respondent was arrested by the Palm Springs Police Department on \$25,000 bench  
warrant issued by the court.

///

1           b.    On or about December 2, 2008, in a criminal proceeding entitled *People of the*  
2 *State of California vs. Alex Demoye Howard*, in Riverside County Superior Court, case number  
3 INF063819, Respondent was convicted of violating Penal Code section 459, first degree burglary,  
4 a felony.

5           c.    As a result of the conviction, Respondent was sentenced to serve six months in  
6 jail, and was granted probation for 36 months. On May 21, 2013, the court reduced the conviction  
7 to a misdemeanor. Respondent was permitted to withdraw his plea of guilty, enter a plea of not  
8 guilty, and the conviction was dismissed under Penal Code section 1203.4.

9                                   **SECOND CAUSE FOR DENIAL OF APPLICATION**

10                   **(October 22, 2009 Criminal Conviction for Grand Theft on December 17, 2008)**

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

16           a.    On or about October 22, 2009, in a criminal proceeding entitled *People of the*  
17 *State of California vs. Alex Demoye Howard*, in Riverside County Superior Court, case number  
18 INF064440, Respondent was convicted on his plea of guilty of violating Penal Code section 487,  
19 subdivision (c), grand theft of property from another person, a felony reduced to a misdemeanor  
20 under Penal Code section 17, subdivision (b).

21           b.    As a result of the conviction, Respondent was sentenced to serve nine days in  
22 the Riverside County Jail, with pre-custody credit for nine days. On May 21, 2013, the court  
23 permitted Respondent to withdraw his plea of guilty, enter a plea of not guilty, and the conviction  
24 was dismissed under Penal Code section 1203.4.

25           c.    The facts that led to the conviction are that on or about noon on December 17,  
26 2008, Respondent approached a woman and asked her if she wanted to buy some "weed." After  
27 she declined the offer, Respondent asked the woman for \$1.00 for bus fare. As the woman was  
28 attempting to give Respondent a dollar, he grabbed all the money from her hand (\$200.00) and ran

1 away. The victim ran after Respondent and saw him run towards a residence. The victim knocked  
2 on the door and asked the male who answered if he knew anything about the robbery. He told her  
3 he did not. The victim then called the Palm Springs Police Department who went to Respondent's  
4 residence. Respondent's clothing was an exact match of the description provided by the victim.  
5 She was able to pick his photo in a photo line-up, and she positively identified Respondent as the  
6 person who robbed her in an infield show-up. Respondent was arrested for robbery.

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

#### 8 **(Commission of Acts Involving Dishonesty, Moral Turpitude, Deceit and/or Corruption)**

9 15. Respondent's application for registration as a pharmacy technician is subject to denial  
10 under sections 480, subdivisions (a)(2) and (a)(3)(A) of the Code for unprofessional conduct in  
11 that on or about December 2, 2008 and October 22, 2009, Respondent was convicted of criminal  
12 acts that involve dishonesty, moral turpitude, deceit, and/or corruption with the intent to  
13 substantially benefit himself, as detailed in paragraphs 13 and 14, above. Said conduct would be a  
14 cause for discipline under Business and Professions Code section 4301, subdivision (f) of the Code  
15 for a licensed Registered Dental Assistant.

### 16 **DISCIPLINARY CONSIDERATIONS**

17 16. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant  
18 to California Code of Regulations, title 16, section 1769, Complainant alleges the following:

19 a. On or about the morning of August 15, 2010, the Palm Springs Police  
20 Department was called to respond to a disturbance. After investigating the matter and speaking to  
21 witnesses, officers learned that Respondent was part of a group of people who threw rocks, golf  
22 clubs, and metal objects at a passing vehicle. The victim driver stated her vehicle stalled  
23 temporarily, which was when she was assaulted by one of the group's members. The victim was  
24 familiar with the suspects because they lived in the neighborhood, and she had had confrontations  
25 with Respondent and his family members in the past. Respondent was later arrested.

26 b. On March 7, 2011, in a criminal proceeding entitled *People of the State of*  
27 *California vs. Alex Demoye Howard*, in Riverside County Superior Court, case number  
28 INM10005480, Respondent pled guilty to Penal Code section 415, offensive/loud noise, an

1 infraction added to the complaint by oral amendment. The original charge of throwing any  
2 substance at a vehicle or any occupant (Veh. Code, § 23110(a)) was dismissed.

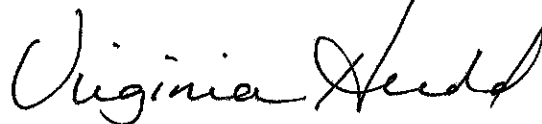
3 c. On the evening of September 12, 2011, a patrol officer with the Palm Springs  
4 Police Department responded to a report of shots fired. The officer went to the residence of one  
5 of the juvenile victims. The victim stated that he was hanging out at his friend's house which was  
6 down the street from where Respondent lived with his family. According to the victim and  
7 witnesses, prior to the shooting, Respondent and his family members arrived at the friend's house  
8 and tried to engage the juveniles in a fight. When the victim and his friends left the residence later,  
9 Respondent and his brother threw rocks at the juveniles. Respondent ran into the street, fired one  
10 shot into the air, and then fired an unknown number of bullets towards the juveniles, who fled the  
11 scene unharmed. Respondent was driven away from the scene by a family member. Investigators  
12 found a shell casing on the ground next to the garage, which matched a WIN 9mm Luger shell  
13 casing found in Respondent's driveway. Respondent was arrested for assault with a deadly  
14 weapon, however, no formal charges were filed.

15 **PRAYER**

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

- 18 1. Denying the application of Alex Demoye Howard for a Pharmacy Technician  
19 Registration;  
20 2. Taking such other and further action as deemed necessary and proper.

21  
22 DATED: 9/16/16



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

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