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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
Against:

Case No. 6033

12 **EVERETT ALEXANDER RINCAN**

STATEMENT OF ISSUES

13 Pharmacy Technician Registration Applicant

14 Respondent.

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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, Department of Consumer Affairs
21 (Board).

22 2. On or about April 18, 2016, the Board received an application for a Pharmacy
23 Technician Registration from Everett Alexander Rincan (Respondent). On or about April 14,
24 2016, Everett Alexander Rincan certified under penalty of perjury to the truthfulness of all
25 statements, answers, and representations in the application. The Board denied the application on
26 October 13, 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 unless otherwise
4 indicated.

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

7 5. Section 4300.1 states:

8 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
9 operation of law or by order or decision of the board or a court of law, the placement of a license
10 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
11 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
12 proceeding against, the licensee or to render a decision suspending or revoking the license."

13 **STATUTORY PROVISIONS**

14 6. Section 480 states:

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

17 "(1) Been convicted of a crime. A conviction within the meaning of this section means
18 a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
19 board is permitted to take following the establishment of a conviction may be taken when the time
20 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an
21 order granting probation is made suspending the imposition of sentence, irrespective of a
22 subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

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

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

27 "(B) The board may deny a license pursuant to this subdivision only if the crime
28 or act is substantially related to the qualifications, functions, or duties of the business or

1 profession for which application is made.

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

9 “(c) Notwithstanding any other provisions of this code, a person shall not be denied a
10 license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4,
11 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been
12 dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof
13 of the dismissal.

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

17 7. Section 4301 states, in pertinent part:

18 “The board shall take action against any holder of a license who is guilty of unprofessional
19 conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is
20 not limited to, any of the following:

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

25 ...

26 “(h) The administering to oneself, of any controlled substance, or the use of any
27 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or
28 injurious to oneself, to a person holding a license under this chapter, or to any other person or to

1 the public, or to the extent that the use impairs the ability of the person to conduct with safety to
2 the public the practice authorized by the license.

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

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22 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
23 violation of or conspiring to violate any provision or term of this chapter or of the applicable
24 federal and state laws and regulations governing pharmacy, including regulations established by
25 the board or by any other state or federal regulatory agency."

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

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1 **REGULATORY PROVISIONS**

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

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

9 **FIRST CAUSE FOR DENIAL OF APPLICATION**

10 **(Convictions of Substantially Related Crimes)**

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

13 a. On or about June 27, 2013, after pleading nolo contendere, Respondent was convicted
14 of one misdemeanor count of violating Penal Code section 484, subdivision (a) [petty theft] in the
15 criminal proceeding entitled *The People of the State of California v. Everett Alexander Rincon*
16 (Super. Ct. L.A. County, 2013, No. 3CA15775). The Court placed Respondent on 12 months
17 probation, with terms and conditions. The circumstances surrounding the conviction are that on
18 or about June 6, 2013, Respondent entered a Macy's Department store and was observed by Loss
19 Prevention Agents to select multiple items, enter a fitting room, and then exit with one item. The
20 Loss Prevention Agents entered the fitting room formally occupied by Respondent and observed
21 no clothing inside the fitting stall. Respondent was then observed to select a kitchenware item,
22 remove the wrapping, and exit the store with the kitchen item in his hand with a small duffle bag.
23 Respondent was detained outside of the store and subsequently arrested by Los Angeles Police
24 Department officers.

25 b. On or about January 11, 2010, after pleading nolo contendere, Respondent was
26 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
27 [driving while having 0.08% or more, by weight, of alcohol in his blood] in the criminal
28 proceeding entitled *The People of the State of California v. Ever Castillo* (Super. Ct. L.A. County,

1 2010, No. 9BV01423). The Court ordered Respondent to attend a 6-month first offender DUI
2 program and placed him on 36 months probation, with terms and conditions. The circumstances
3 surrounding the conviction are that on or about July 11, 2009, Beverly Hills Police Department
4 officers initiated an enforcement stop after observing Respondent drive a vehicle without
5 headlights activated during hours of darkness. While speaking to Respondent, the officers
6 smelled a strong odor of alcohol emitting from his breath and he was observed to have slurred
7 speech and bloodshot watery eyes. Respondent admitted to having two drinks. Respondent
8 submitted to a series of field sobriety tests which he was unable to perform as indicated. During
9 the booking procedure, Respondent provided a breath sample that revealed a breath alcohol
10 content level of 0.17% on the first and second readings.

11 **SECOND CAUSE FOR DENIAL OF APPLICATION**

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

13 10. Respondent's application is subject to denial under section 480, subdivision (a)(2), in
14 that on or about June 6, 2013, Respondent committed acts involving dishonesty, fraud, or deceit
15 with the intent to substantially benefit himself, or substantially injure another. Complainant refers
16 to, and by this reference incorporates, the allegations set forth above in paragraph 9, subparagraph
17 (a), as though set forth fully

18 **THIRD CAUSE FOR DENIAL OF APPLICATION**

19 **(Knowingly Made a False Statement of Fact)**

20 11. Respondent application is subject to denial under section 480, subdivision (c), in that
21 on or about April 14, 2016, Respondent knowingly made a false statement of fact by failing to
22 disclose his two convictions, on his application for licensure when he checked no, to question No.
23 8, in the application which asked if he had ever been convicted of a criminal offense.
24 Complainant refers to, and by this reference incorporates, the allegations set forth in paragraph 9,
25 as though set forth fully.

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1 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

2 **(Acts Warranting Denial of Licensure)**

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

7 a. Respondent was convicted of crimes substantially related to the qualifications,
8 functions, or duties of a pharmacy technician which to a substantial degree evidence his present or
9 potential unfitness to perform the functions authorized by his license in a manner consistent with
10 the public health, safety, or welfare, in violation of sections 4301, subdivision (l), and 490, in
11 conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,
12 and by this reference incorporates, the allegations set forth above in paragraph 9, as though set
13 forth fully.

14 b. Respondent committed acts involving dishonesty, fraud, or deceit, in violation of
15 section 4301, subdivision (f). Complainant refers to, and by this reference incorporates, the
16 allegations set forth above in paragraph 9, subparagraph (a), as though set forth fully.

17 c. Respondent used alcoholic beverages to an extent or in a manner dangerous or
18 injurious to himself, any person, or the public, in violation of section 4301, subdivision (h).
19 Complainant refers to, and by this reference incorporates, the allegations set forth above in
20 paragraph 9, subparagraph (b), as though set forth fully.

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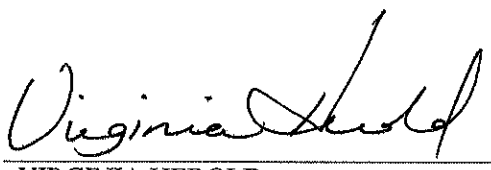
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PRAYER

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

1. Denying the application of Everett Alexander Rincan for a Pharmacy Technician Registration; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 3/4/17



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

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