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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
12 Against:

Case No. 6073

13 **CECILIA VILLAREAL ZARAGOZA**
14 **Pharmacy Technician License Applicant**

STATEMENT OF ISSUES

15 Respondent.

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, Department of Consumer Affairs.

20 2. On or about September 23, 2016, the Board of Pharmacy (Board) received an
21 application for a Pharmacy Technician License from Cecilia Villareal Zaragoza (Respondent).

22 On or about August 29, 2016, Cecilia Villareal Zaragoza certified under penalty of perjury to the
23 truthfulness of all statements, answers, and representations in the application. The Board denied
24 the application on January 27, 2017.

25 **JURISDICTION**

26 3. This Statement of Issues is brought before the Board under the authority of the
27 following laws. All section references are to the Business and Professions Code unless otherwise
28 indicated.

1 STATUTORY PROVISIONS

2 4. Section 480 states, in pertinent part:

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

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

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

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

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

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

1 5. Section 490 states, in pertinent part:

2 "(a) In addition to any other action that a board is permitted to take against a licensee, a
3 board may suspend or revoke a license on the ground that the licensee has been convicted of a
4 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
5 or profession for which the license was issued.

6 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
7 discipline a licensee for conviction of a crime that is independent of the authority granted under
8 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
9 of the business or profession for which the licensee's license was issued.

10 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
11 conviction following a plea of nolo contendere. Any action that a board is permitted to take
12 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
13 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
14 made suspending the imposition of sentence, irrespective of a subsequent order under the
15 provisions of Section 1203.4 of the Penal Code."

16 6. Section 493 states:

17 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
18 the department pursuant to law to deny an application for a license or to suspend or revoke a
19 license or otherwise take disciplinary action against a person who holds a license, upon the
20 ground that the applicant or the licensee has been convicted of a crime substantially related to the
21 qualifications, functions, and duties of the licensee in question, the record of conviction of the
22 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
23 and the board may inquire into the circumstances surrounding the commission of the crime in
24 order to fix the degree of discipline or to determine if the conviction is substantially related to the
25 qualifications, functions, and duties of the licensee in question. As used in this section, "license"
26 includes "certificate," "permit," "authority," and "registration."

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1 7. Section 4300 provides in pertinent part, that every license issued by the Boards is
2 subject to discipline, including suspension or revocation."

3 8. Section 4301 states, in pertinent part:

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

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

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

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.

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

5 **REGULATORY PROVISIONS**

6 9. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

13 **FIRST CAUSE FOR DENIAL OF APPLICATION**

14 **(Conviction of a Substantially Crime)**

15 10. Respondent's application is subject to denial under section 480, subdivision (a)(1), in
16 that Respondent was convicted of crime substantially related to the qualifications, functions or
17 duties of a licensed pharmacy technician. Specifically, on March 11, 2016, Respondent was
18 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
19 [driving while having 0.08% or more, by weight of alcohol in her blood] in the criminal
20 proceeding entitled *The State of California v. Cecilia Villareal Zaragoza* (Super. Ct. Kern
21 County, 2016, No. BM868042A). The court placed Respondent on 3 years probation, with terms
22 and conditions. The circumstances surrounding the conviction are that on or about August 1,
23 2015, during a hit and run traffic collision investigation, Respondent was located down the street
24 by the tire friction marks on the street and was observed standing next to her vehicle, which had
25 front end damage. An officer detected a strong odor of an alcoholic beverage coming from her
26 breath and person. She was observed to have red watery eyes, slurred speech, and an unsteady
27 gait. Respondent admitted that she consumed 2 beers. She did not perform the standard Field
28 Sobriety Tests (F.S.T.), as demonstrated and explained by the officer. During the booking

1 procedure, Respondent submitted to a breath test that resulted in a breath-alcohol concentration
2 level of 0.22% on the first and second reading.

3 **SECOND CAUSE FOR DENIAL OF APPLICATION**

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

5 11. Respondent's application is subject to denial under sections 4301, subdivision (p), and
6 480, subdivision (a)(3)(A) and (a)(3)(B), in that Respondent committed acts which if done by a
7 licentiate would be grounds for suspension or revocation of her license, as follows:

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

15 b. Respondent used alcoholic beverages to the extent or in a manner as to be dangerous
16 or injurious to herself, another person, or the public, in violation of section 4301, subdivisions (h).
17 Complainant refers to, and by this reference incorporates, the allegations set forth above in
18 paragraph 10, as though set forth fully and as follows: On or about January 1, 2015, during an
19 investigation of a peace disturbance, Respondent was located sitting in the front yard of an
20 unknown residence with her head down between the bushes. An officer detected a strong odor of
21 an alcoholic beverage coming from Respondent's breath and person. She was observed to have
22 red watery eyes and an unsteady gait. Respondent was unable to provide for her safety or the
23 safety of others and was subsequently arrested, in violation of Penal Code section 647,
24 subdivision (f) [disorderly conduct: drunk in public].

25 **PRAYER**

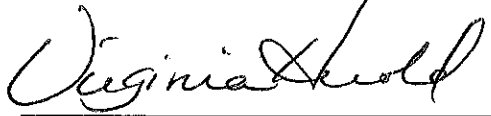
26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Board of Pharmacy issue a decision:

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1. Denying the application of Cecilia Villareal Zaragoza for a Pharmacy Technician License; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 5/15/17



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

LA2017603655
Jz(5/11/17)