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

12
13
14 In the Matter of the Statement of Issues
Against:

Case No. 6154

15 **HUMPHREY ALEXANDER MIRANDA**

STATEMENT OF ISSUES

16 Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about December 5, 2016, the Board received an application for a Pharmacy
25 Technician's License from Humphrey Alexander Miranda (Respondent). On or about December
26 5, 2016, Respondent certified under penalty of perjury to the truthfulness of all statements,
27 answers, and representations in the application. The Board denied the application on April 25,
28 2017.

1 **JURISDICTION AND STATUTORY AND REGULATORY AUTHORITY**

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 475 of the Code states, in pertinent part:

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

8 "(1) Knowingly making a false statement of material fact, or knowingly
9 omitting to state a material fact, in an application for a license.

10 "(2) Conviction of a crime.
11

12 "(4) Commission of any act which, if done by a licentiate of the business or
13 profession in question, would be grounds for suspension or revocation of license
14 "

15 5. Section 480 of the Code states, in pertinent part:

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

18 "(1) Been convicted of a crime. A conviction within the meaning of this
19 section means a plea or verdict of guilty or a conviction following a plea of nolo
20 contendere. Any action that a board is permitted to take following the establishment
21 of a conviction may be taken when the time for appeal has elapsed, or the judgment
22 of conviction has been affirmed on appeal, or when an order granting probation is
23 made suspending the imposition of sentence, irrespective of a subsequent order under
24 the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.
25

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

6. Section 4300 of the Code states, in pertinent part:

.....

"(c) The board may refuse a license to any applicant guilty of unprofessional conduct.

1 ...”

2 7. Code section 4301 states, in pertinent part:

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

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

11 (j) The violation of any of the statutes of this state, of another state, or of the
12 United States regulating controlled substances and dangerous drugs.

13 (k) The conviction of more than one misdemeanor or any felony involving
14 the use, consumption, or self administration of any dangerous drug or alcoholic
15 beverage, or any combination of those substances.

16 (l) The conviction of a crime substantially related to the qualifications,
17 functions, and duties of a licensee under this chapter. The record of conviction of a
18 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
19 States Code regulating controlled substances or of a violation of the statutes of this
20 state regulating controlled substances or dangerous drugs shall be conclusive
21 evidence of unprofessional conduct. In all other cases, the record of conviction shall
22 be conclusive evidence only of the fact that the conviction occurred. The board may
23 inquire into the circumstances surrounding the commission of the crime, in order to
24 fix the degree of discipline or, in the case of a conviction not involving controlled
25 substances or dangerous drugs, to determine if the conviction is of an offense
26 substantially related to the qualifications, functions, and duties of a licensee under this
27 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
28 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.

22 **Drugs**

23 8. “Marihuana” (also known as marijuana and cannabis) is a Schedule I controlled
24 substance as designated by United States Code, title 812, section 812(c)(10).

25 **STATEMENT OF FACTS**

26 9. On or about May 27, 2008, Respondent, who was 18 years of age, was found to be in
27 possession of eight separate baggies of Marijuana packaged for sale and one baggie containing
28 Ecstasy on the grounds of his high school. Respondent was arrested for violations of Health and

1 Safety Code sections 11359, Possessing Marijuana for Sale, a Felony, and 11357(d), Adult
2 Possessing Marijuana on School Grounds, a misdemeanor. On May 28, 2008, respondent was
3 charged with a violation of Health and Safety Code sections 11377(a), Possession of a Controlled
4 Substance, and on October 20 of that same year the court granted Respondent a deferred entry of
5 judgement. On January 10, 2011, the case was dismissed pursuant to Penal Code section
6 1210.1(d).

7 10. On or about September 21, 2009, in a criminal proceeding entitled *People of the State*
8 *of California vs. Humphrey Alexander Miranda* in Solano County Superior Court, Case Number
9 FCR267840 Respondent was convicted of violating Health and Safety Code section 11359,
10 Possessing Marijuana for Sale, a Felony. The circumstances are as follows:

11 a. On or about June 23, 2009, Respondent was found to be in possession of a large
12 amount of cash, sixteen separate baggies of Marijuana, and 60 empty plastic
13 baggies in his pocket. Respondent admitted that the Marijuana, cash, and
14 baggies were his.

15 b. On or about September 21, 2009, Respondent was convicted of violating Health
16 and Safety Code section 11359, Possessing Marijuana for Sale, a Felony. He
17 was placed on three years' probation.

18 c. On or about August 9, 2016, Respondent's Felony conviction for Health and
19 Safety Code section 11359 was set aside and dismissed pursuant to Penal Code
20 Section 1203.4.

21 11. On or about March 23, 2011, in a criminal proceeding entitled *People of the State of*
22 *California vs. Humphrey Alexander Miranda* in Napa County Superior Court, Case Number
23 CR152715, Respondent was convicted of violating Vehicle Code section 23152(b), Driving
24 Under the Influence with a Blood Alcohol Concentration of 08% or above, a Misdemeanor.¹
25 Court records indicate that the respondent's Blood Alcohol Content was .13%. The Court placed
26 Respondent on probation for a period of five years. On or about October 11, 2016, Respondent's
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28 ¹ The original arrest report has been purged.

1 conviction for Vehicle Code section 23152(b) was set aside and dismissed pursuant to Penal
2 Code Section 1203.4.

3 12. On or about April 22, 2011, in a criminal proceeding entitled *People of the State of*
4 *California vs. Humphrey Alexander Miranda* in Marin County Superior Court case no.
5 CR174419A, Respondent was convicted of violating Vehicle Code sections 23153(b), Driving
6 Under the Influence with a Blood Alcohol Concentration of 08% or above Causing Injury, a
7 Misdemeanor, and 14601.5(a), Driving on a Suspended License for prior DUI, a Misdemeanor.²
8 Court records indicate that the respondent's Blood Alcohol Content was .23%. The Court placed
9 Respondent on probation for a period of three years. On or about May 2, 2016, Respondent's
10 conviction for Vehicle Code sections 23153(b) and 14601.5(a) were set aside and dismissed
11 pursuant to Penal Code Section 1203.4.

12 13. On or about December 5, 2016, Respondent submitted a Pharmacy Technician
13 Application, signed under penalty of perjury. Respondent indicated "No" to questions number 8
14 on the Application, which asks "Have you ever been convicted of, or pleaded guilty or nolo
15 contendere to, any crime, in any state, the United States or its territories, a military court, or any
16 foreign country?"

17 **FIRST CAUSE FOR DENIAL OF APPLICATION**

18 (Conviction of a Crime)

19 14. Respondent's application is subject to denial under Code section 475(a)(2) and
20 480(a)(1) in that Respondent was convicted of a crime or crimes as set forth in paragraphs 9-11
21 above.

22 **SECOND CAUSE FOR DENIAL OF APPLICATION**

23 (False Statement)

24 15. Respondent's application is subject to denial under section Code sections 475(a)(1)
25 and 480(d) in that on or about December 5, 2016 Respondent knowingly made a false statement
26 of fact that was required to be revealed in the application for the license as set forth in paragraph
27 12 above.

28 ² The original arrest report has been purged.

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THIRD CAUSE FOR DENIAL OF APPLICATION

(Act That if Done by a Licentiate Would Be Grounds for Suspension or Revocation)

16. Respondent's application is subject to denial under section 480 (a)(3)(A) in that Respondent committed an act or acts that if done by a Pharmacy Technician would be grounds for discipline as follows:

- a. Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to himself or others, as more particularly set forth above in paragraphs 11 and 12, which is grounds for discipline under Code section 4301, subdivision (h).
- b. Respondent violated the statutes of this state and of the United States regulating controlled substances and dangerous drugs, as more particularly set forth above in paragraphs 9 and 10, which are grounds for discipline under Code section 4301, subdivision (j).
- c. Respondent was convicted of a crime or crimes involving alcoholic beverages, as more particularly set forth above in paragraphs 11 and 12, which is grounds for discipline under Code section 4301, subdivision (k).
- d. Respondent was convicted of crimes substantially related to the qualifications, functions and duties of a pharmacy technician, as more particularly set forth above in paragraphs 10 - 12, which are grounds for discipline under Code section 4301, subdivision (l).
- e. Respondent knowingly made a false statement of fact that was required to be revealed in the application for the license as set forth in paragraph 13 above, which is grounds for discipline under Code section 4301 as a material misrepresentation.

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:

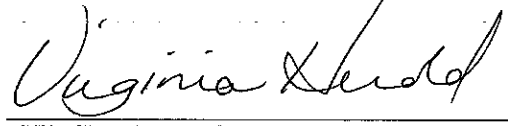
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1. Denying the application of Humphrey Alexander Miranda for a Pharmacy Technician;

2. Taking such other and further action as deemed necessary and proper.

DATED: 9/11/17



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

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