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

In the Matter of the Statement of Issues  
Against:  
**NOEL MAGANA**  
Applicant Pharmacy Technician Registration  
Respondent.

Case No. 4159  
OAH No. 2012100178  
**DEFAULT DECISION AND ORDER**  
[Gov. Code, § 11520]

**FINDINGS OF FACT**

1. On or about September 7, 2012, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the California State Board of Pharmacy, Department of Consumer Affairs, filed Statement of Issues No. 4159 against Noel Magana ("Respondent") before the Board of Pharmacy.
  2. On or about October 28, 2010, Respondent filed an application dated October 21, 2010, with the Board of Pharmacy ("Board") to obtain a Pharmacy Technician Registration.
  3. On or about May 25, 2011, the Board issued a letter denying Respondent's application for a Pharmacy Technician Registration.
  4. On or about May 19, 2014, Respondent appealed the Board's denial of his application and requested a hearing.
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1           5.     On or about September 7, 2012, an employee of the Department of Justice, served by  
2 Certified and First Class Mail a copy of the Statement of Issues No. 4159, Statement to  
3 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,  
4 11507.6, and 11507.7 to Respondent's address on the application form, which was and is 10301  
5 Pinehurst Avenue, Southgate, CA 90280. A copy of the Statement of Issues is attached as exhibit  
6 A, and is incorporated herein by reference.

7           6.     Service of the Statement of Issues was effective as a matter of law under the  
8 provisions of Government Code section 11505, subdivision (c).

9           7.     On or about September 11, 2014, a Notice of Hearing was served by Certified and  
10 First Class mail at Respondent's address on the application, and at 10120 ½ Beverly Street,  
11 Bellflower, CA 90706. It informed him that an administrative hearing in this matter was  
12 scheduled for December 3, 2014. Respondent failed to appear at that hearing.

13           8.     Government Code section 11506 states, in pertinent part:  
14

15           (c) The respondent shall be entitled to a hearing on the merits if the respondent  
16 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
17 of the accusation not expressly admitted. Failure to file a notice of defense shall  
18 constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
19 may nevertheless grant a hearing.

20           9.     California Government Code section 11520 states, in pertinent part:  
21

22           (a) If the respondent either fails to file a notice of defense or to appear at the  
23 hearing, the agency may take action based upon the respondent's express admissions  
24 or upon other evidence and affidavits may be used as evidence without any notice to  
25 respondent; and where the burden of proof is on the respondent to establish that the  
26 respondent is entitled to the agency action sought, the agency may act without taking  
27 evidence.

28           10.    Pursuant to its authority under Government Code section 11520, the Board finds  
Respondent is in default. The Board will take action without further hearing based upon the  
allegation set forth in the Statement of Issues and Respondent's failure to establish entitlement to  
issuance of a license.

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1 **DETERMINATION OF ISSUES**

2 1. Based on the foregoing findings of fact, Respondent Noel Magana has subjected his  
3 application for a Pharmacy Technician Registration to denial.

4 2. Service of Statement of Issues No. 4159 and related documents was proper and in  
5 accordance with the law.

6 3. The agency has jurisdiction to adjudicate this case by default.

7 4. The Board of Pharmacy is authorized to deny Respondent's application for licensure  
8 based upon the following violations alleged in the Statement of Issues:

9 a. Respondent's application is subject to denial under Business and Professions  
10 Code sections 480, subdivision (a)(1), 4301, subdivision (l), in conjunction with California Code  
11 of Regulations, title 16, section 1770, in that on or about August 17, 2005, he was convicted of  
12 one misdemeanor count of violating Penal Code section 594, subdivision (a) [vandalism], a crime  
13 substantially related to the practice of a pharmacy technician.

14 b. Respondent's application is subject to denial under Business and Professions  
15 Code sections 475, subdivision (a)(3), 480, subdivision (a)(2), and 4301, subdivision (f), in that  
16 Respondent committed an act involving moral turpitude, dishonesty, fraud, deceit and/or  
17 corruption.

18 c. Respondent's application is subject to denial under Business and Professions  
19 Code sections 4301, subdivision (p) and 475, subdivision (a)(4), 480, subdivisions (a)(3)(A) and  
20 (a)(3)(B), in that Respondent committed acts which if done by a licentiate of the business and  
21 profession in question, would be grounds for suspension or revocation of his license. The acts are  
22 as follows:

23 i. Respondent was convicted of a crime substantially related to the  
24 qualifications, functions, or duties of a pharmacy technician which to a substantial degree  
25 evidences his present or potential unfitness to perform the functions authorized by his license in a  
26 manner consistent with the public health, safety, or welfare, in violation of Business and  
27 Professions Code sections, 4301, subdivision (l), and 490, in conjunction with California Code of  
28 Regulations, title 16, section 1770.

1           ii. Respondent admitted, in written correspondence with the Board, that he  
2 has possessed marijuana on various occasions and has had to deal with criminal court cases and  
3 convictions for those acts.

4   **ORDER**

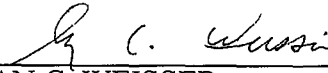
5           IT IS SO ORDERED that the application of Respondent Noel Magana is hereby denied.

6           Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
7 written motion requesting that the Decision be vacated and stating the grounds relied on within  
8 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
9 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

10           This Decision shall become effective on April 6, 2015.

11           It is so ORDERED March 6, 2015.

12   BOARD OF PHARMACY  
13   DEPARTMENT OF CONSUMER AFFAIRS  
14   STATE OF CALIFORNIA

15   By   
16   STAN C. WEISSER  
   Board President

17           DOJ docket number: LA2011601379  
18           51671564.DOC  
             01102015

19  
20           Attachment:

21           Exhibit A: Statement of Issues No.4159  
22  
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# Exhibit A

Statement of Issues No. 4159

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 ANTONIO LOPEZ, JR.  
Deputy Attorney General  
4 State Bar No. 206387  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2536  
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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. 4159

12 **NOEL MAGANA**  
13 10301 Pinehurst Avenue  
14 Southgate, CA 90280

**STATEMENT OF ISSUES**

15 Applicant for Pharmacy Technician  
16 Registration

17 Respondent.

18  
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 2. On or about October 28, 2010, the Board of Pharmacy (Board) received an  
24 application for Pharmacy Technician Registration from Noel Magana (Respondent). On or about  
25 October 21, 2010, Noel Magana certified under penalty of perjury to the truthfulness of all  
26 statements, answers, and representations in the application. The Board denied the application on  
27 May 25, 2011.

28 ///



1 subsequent order under the provisions of Section 1203.4 of the Penal Code.

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

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

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

9 6. Section 490 provides, in pertinent part:

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

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

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

24 7. Section 4300 provides, in pertinent part, that every license issued by the Board is  
25 subject to discipline, including suspension or revocation.

26 8. Section 4301 provides, in pertinent part:

27 "The board shall take action against any holder of a license who is guilty of unprofessional  
28 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.



1 Unprofessional conduct shall include, but is not limited to, any of the following:

2 . . . .

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

6 . . . .

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

24 . . . .

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

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

2 **REGULATORY PROVISIONS**

3 9. California Code of Regulations, title 16, section 1770, provides, in pertinent part:

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

10 **FIRST CAUSE FOR DENIAL OF APPLICATION**

11 **(Conviction of a Crime)**

12 10. Respondent's application is subject to denial under sections 480, subdivision (a)(1),  
13 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770,  
14 in that Respondent was convicted of a crime as follows:

15 a. On or about August 17, 2005, after pleading *nolo contendere*, Respondent was  
16 convicted of one misdemeanor count of violating Penal Code section 594, subdivision (a)  
17 [vandalism], in the criminal proceedings entitled *The People of the State of California v. Noel*  
18 *Magana* (Super. Ct. Los Angeles County, 2005, No. 5DW05326). The Court placed Respondent  
19 on probation for a period of 36 months, and fined him. The circumstances surrounding the  
20 conviction are that on or about June 20, 2005, Respondent unlawfully and maliciously defaced  
21 with graffiti and other inscribed material and otherwise damaged and destroyed real and personal  
22 property, to wit, yellow city pedestrian sign, not his own and belonging to the City of South Gate.

23 **SECOND CAUSE FOR DENIAL OF APPLICATION**

24 **(Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit and/or Corruption)**

25 11. Respondent's application is subject to denial under sections 475, subdivision (a)(3),  
26 480, subdivision (a)(2), and 4301, subdivision (f), in that Respondent committed an act involving  
27 moral turpitude, dishonesty, fraud, deceit and/or corruption and was convicted of a crime  
28 involving moral turpitude, dishonesty, fraud, deceit and/or corruption. Complainant refers to, and

1 by this reference incorporates, the allegations contained in paragraph 10, above, subparagraph (a),  
2 inclusive, as though set forth fully.

3 **THIRD CAUSE FOR DENIAL OF APPLICATION**

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

5 12. Respondent's application is subject to denial under sections 4301, subdivision (p) and  
6 475, subdivision (a)(4), 480, subdivisions (a)(3)(A) and (a)(3)(B), in that Respondent committed  
7 acts which if done by a licentiate of the business and profession in question, would be grounds for  
8 suspension or revocation of his license. The acts are as follows:

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

16 b. Respondent admitted, in written correspondence with the Board, that he has  
17 possessed marijuana on various occasions and has had to deal with criminal court cases and  
18 convictions for those acts. In the correspondence, Respondent specifically stated that he has been  
19 "convicted various times in the past for possession of marijuana . . . which is considered a  
20 misdemeanor." He also admitted that he "paid fines . . . and went to court ordered classes" as part  
21 of the court cases.

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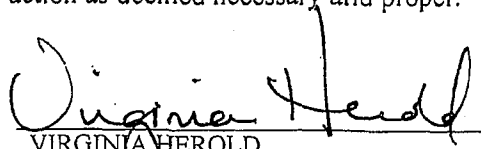
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PRAYER

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

1. Denying the application of Noel Magana as a Pharmacy Technician; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 8/22/12



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

LA2011601379