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

12 In the Matter of the Statement of Issues Against:

Case No. 3194

13 EDWARD RAUL FRIAS, JR.
40479 Melrose Ave
14 Hemet, CA 92544

STATEMENT OF ISSUES

15 Respondent.

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17 Complainant alleges:

18 PARTIES

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

22 2. On or about January 19, 2006, the Board of Pharmacy, Department of
23 Consumer Affairs ("Board") received an application for registration as a Pharmacy Technician
24 from Edward Raul Frias, Jr. (Respondent). On or about January 16, 2006, Edward Raul Frias, Jr.
25 certified under penalty of perjury to the truthfulness of all statements, answers, and
26 representations in the application. The Board denied the application on August 21, 2007.
27 Respondent filed an appeal of the application denial on or about September 21, 2007.

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JURISDICTION

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

4. Section 4300 of the Code states:

...

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

- (1) Medical or psychiatric evaluation.
- (2) Continuing medical or psychiatric treatment.
- (3) Restriction of type or circumstances of practice.
- (4) Continuing participation in a board-approved rehabilitation program.
- (5) Abstention from the use of alcohol or drugs.
- (6) Random fluid testing for alcohol or drugs.
- (7) Compliance with laws and regulations governing the practice of pharmacy.

5. Section 4301 of the Code states:

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

....

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

....

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the

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

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18 6. Section 475 of the Code states:

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

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

23 (2) Conviction of a crime.

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

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

. . . .

7. Section 477 of the Code states:

As used in this division:

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

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

8. Section 480 states, in pertinent part:

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

(1) Been convicted of a crime. A conviction within the meaning of
this section means a plea or verdict of guilty or a conviction following a plea of

1 nolo contendere. Any action which a board is permitted to take following the
2 establishment of a conviction may be taken when the time for appeal has elapsed,
3 or the judgment of conviction has been affirmed on appeal, or when an order
4 granting probation is made suspending the imposition of sentence, irrespective of
5 a subsequent order under the provisions of Section 1203.4 of the Penal Code.

6 (2) Done any act involving dishonesty, fraud or deceit with the
7 intent to substantially benefit himself or another, or substantially injure another;
8 or

9 (3) Done any act which if done by a licentiate of the business or
10 profession in question, would be grounds for suspension or revocation of license.

11 The board may deny a license pursuant to this subdivision only if
12 the crime or act is substantially related to the qualifications, functions or duties of
13 the business or profession for which application is made.

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15 9. Section 493 of the Code states:

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

27 As used in this section, "license" includes "certificate," "permit,"
28 "authority," and "registration."

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

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

11. California Code of Regulations, title 16, section 1020, states:

(a) When considering the denial of a license under Section 480 of the
Code, the board in evaluating the rehabilitation of the applicant and his present
eligibility for a license, will consider the following criteria:

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

1 (2) Evidence of any act(s) committed subsequent to the act(s) or
2 crime(s) under consideration as grounds for denial which also could be
3 considered as grounds for denial under Section 480 of the Code.

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

6 (4) The extent to which the applicant has complied with any terms
7 of parole, probation, restitution, or any other sanctions lawfully imposed against
8 the applicant.

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

11

12 **FIRST CAUSE FOR DENIAL OF APPLICATION**

13 **(April 3, 2003 Criminal Conviction for Possession of Child Pornography)**

14 12. Respondent's application is subject to denial under sections 480,
15 subdivision (a)(1), and 4301, subdivision (l) of the Code in that he was convicted of a crime that
16 is substantially related to the qualifications, duties, and functions of a pharmacy technician. The
17 circumstances are as follows:

18 a. On or about April 3, 2003, in a criminal proceeding entitled *U.S.A.*
19 *v. Edward Frias, Jr.*, in the U.S. District Court, Southern District of California, case number
20 02-CR-03385-BTM, Respondent was convicted on his plea of guilty of violating U.S.C. Title 18,
21 chapter 110, section 2252, subdivision (a)(4)(B), possession of child pornography, a felony.

22 b. As a result of the conviction, on or about July 18, 2003,
23 Respondent was sentenced to 24 months in federal prison, supervised release for a term of three
24 years, a \$100 assessment, plus additional terms and conditions, including registration as a sex
25 offender, pursuant to Penal Code section 290.

26 c. The facts that led to the conviction were that according to
27 Respondent, he purchased a pornographic videotape advertised on an Internet web site. As a
28 result of an investigation into the Internet company, it was discovered that Respondent purchased
material involving child pornography. Respondent was arrested simultaneously with the postal
delivery of Respondent's purchase.

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