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

12 In the Matter of the Statement of Issues
Against,

Case No. 3284

13 **ERIC TURCUAN RIVERA**
21409 Weiser Avenue
14 **Carson, Ca 90745**

STATEMENT OF ISSUES

15 **Pharmacy Technician Registration**
16 **Applicant**

Respondent.

18 Complainant alleges:

19 PARTIES

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

22 2. On or about October 19, 2007, the Board of Pharmacy, Department of Consumer
23 Affairs received an application for a Pharmacy Technician Registration from Eric Turcuan Rivera
24 (Respondent). On or about September 24, 2007, Eric Turcuan Rivera certified under penalty of
25 perjury to the truthfulness of all statements, answers, and representations in the application. The
26 Board denied the application on August 29, 2008.

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JURISDICTION

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2 3. This Statement of Issues is brought before the Board of Pharmacy (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 4301 of the Code states:

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

9 ...

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

12 ...

13 5. Section 480 of the Code states:

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

16

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

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

22 6. Section 492 of the Code states:

23 "Notwithstanding any other provision of law, successful completion of any diversion
24 program under the Penal Code, or successful completion of an alcohol and drug problem
25 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
26 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
27 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
28 division, from taking disciplinary action against a licensee or from denying a license for

1 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
2 record pertaining to an arrest.

3 "This section shall not be construed to apply to any drug diversion program operated by any
4 agency established under Division 2 (commencing with Section 500) of this code, or any
5 initiative act referred to in that division."

6 7. Health and Safety Code section 11377 provides in pertinent part:

7 (a) Except as authorized by law...every person who possesses any controlled substance, unless
8 upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in
9 this state, shall be punished by imprisonment in a county jail for a period of not more than one
10 year or in the state prison.

11 **CONTROLLED SUBSTANCE/DANGEROUS DRUG**

12 8. Methamphetamine is a Schedule II controlled substance as defined in Health and
13 Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to
14 Business and Professions Code section 4022.

15 **CAUSE FOR DENIAL OF APPLICATION**

16 (Possession of Controlled Substance)

17 9. Respondent's application is subject to denial under section 480(a)(3) in conjunction
18 with section 4301(j) for violation of Health and Safety Code section 11377 in that on or around
19 September 2, 2004, he was found to be in possession of a controlled substance, to wit,
20 Methamphetamine.

21 **PRAYER**

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

24 1. Denying the application of Eric Turcuan Rivera for a Pharmacy Technician
25 Registration;

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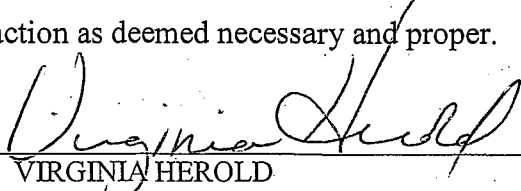
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2. Taking such other and further action as deemed necessary and proper.

DATED: 7/8/09



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

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statement of issues.rtf