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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. 3446

13 **NICHOLAS BRANDON TORRES**  
10348 25th Street  
14 Rancho Cucamonga, CA 91730

**STATEMENT OF ISSUES**

15 Pharmacy Technician Registration Application  
16 Respondent.

17  
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 (Board).

23 2. On or about September 21, 2007, the Board received an Application for Registration  
24 as a Pharmacy Technician from Nicholas Brandon Torres (Respondent). On or about July 18,  
25 2007, and November 5, 2007, Respondent certified under penalty of perjury to the truthfulness of  
26 all statements, answers, and representations in the application. The Board denied the application  
27 on March 25, 2009.

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1 **JURISDICTION**

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 unless otherwise  
4 indicated.

5 **STATUTORY PROVISIONS**

6 4. Section 480 states, in pertinent part:

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

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

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

18 "(3)

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

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

24 . . . .

25 "(c) A board may deny a license regulated by this code on the ground that the applicant  
26 knowingly made a false statement of fact required to be revealed in the application for the  
27 license."

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1 5. Section 4300, subdivision (c), states, in pertinent part, that “[t]he board may refuse a  
2 license to any applicant guilty of unprofessional conduct. . . .”

3 6. 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:

7 . . . .

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

11 "(g) Knowingly making or signing any certificate or other document that falsely  
12 represents the existence or nonexistence of a state of facts.

13 . . . .

14 "(l) The conviction of a crime substantially related to the qualifications, functions, and  
15 duties of a licensee . . . The board may inquire into the circumstances surrounding the  
16 commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not  
17 involving controlled substances or dangerous drugs, to determine if the conviction is of an offense  
18 substantially related to the qualifications, functions, and duties of a licensee under this  
19 chapter. . . .”

20 **REGULATORY PROVISIONS**

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

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

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1 [disorderly conduct] in the criminal proceeding entitled *The People of the State of California v.*  
2 *Nicholas Brandon Torres* (Super. Ct. Monterey County, 2000, No. MS184129A). The Court  
3 sentenced Respondent to 90 days in jail, and placed him on 36 months probation. The  
4 circumstances underlying the conviction are that on or about July 20, 2000, Respondent attended  
5 the Rodeo in Salinas, California. While walking around, Respondent grabbed and groped,  
6 alternately, two teenage girls, ages 13 and 16.

7 d. On or about July 21, 2000, after pleading guilty, Respondent was convicted of one  
8 misdemeanor count of violating Vehicle Code section 12500(a) [driving without a valid license]  
9 in the criminal proceeding entitled *The People of the State of California v. Nicholas Brandon*  
10 *Torres* (Super. Ct. Monterey County, 2000, No. MS178016A). The Court placed Respondent on  
11 three (3) years probation, and ordered him to pay fines. The circumstances underlying the  
12 conviction are that on or about July 15, 2000, Respondent drove a vehicle when his driver's  
13 license was suspended or revoked.

14 e. On or about April 12, 2000, after pleading guilty, Respondent was convicted of one  
15 misdemeanor count of violating Penal Code section 459 [burglary] in the criminal proceeding  
16 entitled *The People of the State of California v. Nicholas Brandon Torres* (Super. Ct. Monterey  
17 County, 2000, No. MS179815). The Court sentenced Respondent to 25 days in jail, and placed  
18 him on 36 months probation. The circumstances underlying the conviction are that on or about  
19 Wednesday, March 15, 2000, 12:30 pm, Respondent, a student, was the subject of a probation  
20 search at North Salinas High School. Respondent possessed three (3) stolen credit cards.  
21 Respondent admitted to using at least one of the cards.

22 **SECOND CAUSE FOR DENIAL OF APPLICATION**

23 **(Dishonesty in Application Documents)**

24 9. Respondent's application is subject to denial under sections 480, subdivision (c), 4300  
25 and 4301, subdivision (g), in that Respondent knowingly made false statements, and/or,  
26 knowingly omitted material facts, which were required to be revealed in Respondent's  
27 Application for Registration as a Pharmacy Technician as follows:

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1 a. On or about July 18, 2007, and November 5, 2007, Respondent signed his  
2 Application for Registration as a Pharmacy Technician and included an affidavit, certifying under  
3 penalty of perjury to the truth and accuracy of all statements, answers, and representations  
4 therein. Respondent answered "Yes" to Question 6 of the application, and failed to provide the  
5 Board with any explanation for his affirmative answer. Question 6 asks:

6 Have you ever been convicted of or pled no contest to a violation of any  
7 law of a foreign country, the United States or any state laws or local ordinances? You  
8 must include all misdemeanor and felony convictions, regardless of the age of the  
9 conviction, including those which have been set aside under Penal Code  
10 section 1203.4. Traffic violations of \$500 or less need not be reported. **If "yes,"**  
11 **attach an explanation including the type of violation, the date, circumstances,**  
12 **location and the complete penalty received.** In addition to this written explanation,  
13 please provide the Board of Pharmacy with **certified copies of all pertinent court**  
14 **documents or arrest reports relating to this conviction.**

11 b. On or about November 5, 2007, in reply to the Board's request for substantiating  
12 documentation for his answer to Question 6, Respondent provided written explanations for only  
13 two (2) convictions, which are more fully discussed in paragraph 8, subparagraphs (b) and (c),  
14 above.

15 c. Respondent failed to disclose and provide information related to two convictions,  
16 which are more fully discussed in paragraph 8, subparagraphs, (d) and (e), and are herein  
17 incorporated by reference as set forth in whole<sup>2</sup>.

### 18 THIRD CAUSE FOR DENIAL OF APPLICATION

#### 19 (Acts of Dishonesty and Moral Turpitude)

20 10. Respondent's application is subject to denial under sections 480, subdivision (a)(2),  
21 4300 and 4301, subdivisions (f), on the grounds of unprofessional conduct, in that Respondent  
22 committed acts of dishonesty, and/or, moral turpitude, as more fully discussed in paragraphs 8  
23 and 9, above, which are herein incorporated by reference as set forth in whole.

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27 <sup>2</sup> At the time of his Application for Registration as a Pharmacy Technician, Respondent's  
28 conviction discussed in paragraph 8, subparagraph (a), was not yet final, and thus could not be  
disclosed.

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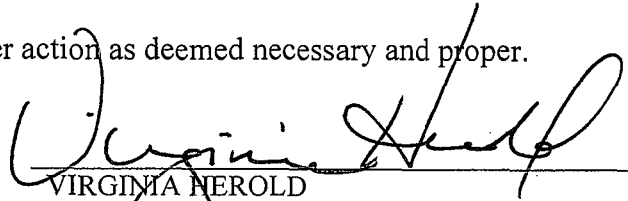
PRAYER

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 Respondent Nicholas Brandon Torres' application for Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: \_\_\_\_\_

7/19/10



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

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