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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  
Against:

Case No. 3453

12 **MELISSA V. BELLOSO**

**STATEMENT OF ISSUES**

13 Respondent.

14  
15 Complainant alleges:

16 **PARTIES**

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

19 2. On or about February 19, 2008, the Board of Pharmacy, Department of Consumer  
20 Affairs (Board) received a Pharmacy Technician application from Melissa V. Belloso  
21 (Respondent). On or about February 12, 2008, Respondent certified, under penalty of perjury,  
22 the truthfulness of all statements, answers, and representations in the application. The Board  
23 denied the application on May 14, 2009.

24 **JURISDICTION**

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

28 4. Section 480, subdivision (a), of the Code states, in pertinent part:

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(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 nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code. . . .

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

5. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

6. Section 4300, subdivision (c), of the Code states:  
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.

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7. Section 4301 of the Code states, in pertinent part:

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: . . .

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

(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 the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. . . . The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. . . . The board may take action . . . 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. . . .

**REGULATORY AUTHORITY**

8. 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.

**DRUGS AND CONTROLLED SUBSTANCES**

9. Section 4021 of the Code states that “‘controlled substance’ means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.”

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10. Section 4022 of the Code states, in pertinent part:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following: . . .

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

11. Section 4060 of the Code states that no person shall possess any controlled substance, except that furnished to a person upon the prescription or a drug order.

12. Section 4077 of the Code states that, except as provided in subdivisions (b) and (c) of the section, no person shall dispense any dangerous drug upon prescription except in a container correctly labeled with the information required by Section 4076.

13. Section 11364 of the Health and Safety Code states that it is unlawful to possess an opium pipe or any device, contrivance, instrument or paraphernalia used for unlawfully injecting or smoking a controlled substance.

14. Marijuana is a Hallucinogenic Schedule I controlled substance pursuant to Health and Safety Code section 11054, subdivision (d)(13), and a dangerous drug pursuant to Business and Professions Code section 4022.

**FIRST CAUSE FOR DENIAL OF APPLICATION**

**(Conviction of Crime)**

15. Respondent's application is subject to denial under section 480, subdivisions (a)(1) and (a)(3)(B), as a result of Respondent's conviction of a crime that is substantially related to the qualifications, functions, and duties of a pharmacy technician. On or about September 11, 2007, in a criminal proceeding entitled *People v. Bellosso* in Yuma County Municipal Court, State of Arizona, Case Number CR200700431, Respondent was convicted by plea of nolo contendere in Arizona Revised Statutes, Criminal Code section 13-3404 (Possession of Marijuana) and Arizona Revised Statutes, Criminal Code section 13-3415 (Possession of Drug Paraphernalia), both misdemeanors. Respondent was sentenced as follows: 6 months suspended jail sentence, 18 months unsupervised probation, submit to drug and alcohol screening, pay certain fines, complete a drug treatment program, and to comply with other terms and conditions.

1 SECOND CAUSE FOR DENIAL OF APPLICATION

2 (Committing Acts That Would Result in License Suspension or Revocation)

3 16. Complainant realleges the allegations contained in paragraph 15 above, and  
4 incorporates them by reference as if fully set forth.

5 17. Respondent's application is subject to denial under section 480, subdivision (a)(3), in  
6 conjunction with sections 4300 and 4301, subdivision (j), as a result of Respondent's violation of  
7 another state's statutes regulating controlled substances and dangerous drugs.

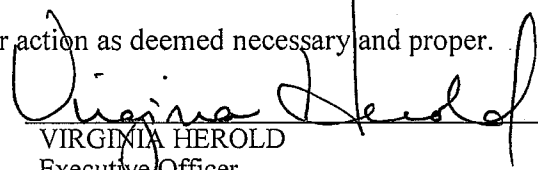
8 18. Respondent's application is subject to denial under section 480, subdivision (a)(3), in  
9 conjunction with sections 4300 and 4301, subdivision (l), as a result of Respondent's conviction  
10 of a crime substantially related to the qualifications, functions, and duties of a pharmacy  
11 technician, which would result in license suspension or revocation of a Respondent who was  
12 already licensed as a pharmacy technician.

13 PRAYER

14 WHEREFORE, Complainant requests that a hearing be held on the matters here alleged,  
15 and that following the hearing, the Board of Pharmacy issue a decision:

- 16 1. Denying the application of Melissa V. Belloso for a pharmacy technician license; and
- 17 2. Taking such other and further action as deemed necessary and proper.

18 DATED: 5/28/10



19 VIRGINIA HEROLD  
20 Executive Officer  
21 Board of Pharmacy  
22 Department of Consumer Affairs  
23 State of California  
24 Complainant

25 SF2009405156