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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. 3463

12 **JOSEPH RAYMOND AROS**  
13 **17238 Chatsworth Street, #2**  
14 **Granada Hills, CA 91344**

**STATEMENT OF ISSUES**

15 **Pharmacy Technician Applicant**

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 2. On or about July 29, 2008, the Board of Pharmacy (Board) received an application for  
23 a Pharmacy Technician License from Joseph Raymond Aros (Respondent). On or about July 21,  
24 2008, Respondent certified under penalty of perjury under the laws of the State of California the  
25 truthfulness and accuracy of all statements, answers, and representations in the application,  
26 including that he had never been convicted of a criminal offense. The Board notified Respondent  
27 by letter on July 6, 2009 that his application for registration as a pharmacy technician was denied  
28 pursuant to, but not limited to, Business & Professions Code sections 480, subdivisions (a)(1),

1 (a)(2) and (a)(3). On or about September 9, 2009, the Board received a letter from Respondent  
2 dated August 29, 2009, which set forth Respondent's request for an appeal of the Board's  
3 decision denying him licensure as a pharmacy technician.

#### 4 JURISDICTION

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

#### 8 STATUTORY PROVISIONS

9 4. Section 480 of the Code states:

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

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

19 (2) Done any act involving dishonesty, fraud, or deceit with the intent to  
20 substantially benefit himself . . . or another, or substantially injure another; or

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

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

26 (b) Notwithstanding any other provision of this code, no person shall be  
27 denied a license solely on the basis that he . . . has been convicted of a felony if he . . .  
28 has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with  
Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he . . . has been  
convicted of a misdemeanor if he . . . has met all applicable requirements of the  
criteria of rehabilitation developed by the board to evaluate the rehabilitation of a  
person when considering the denial of a license under subdivision (a) of Section 482.

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

5. Section 490 of the Code states:

"(a) In addition to any other action that a board is permitted to  
take against a licensee, a board may suspend or revoke a license on the ground that

1 the licensee has been convicted of a crime, if the crime is substantially related to the  
2 qualifications, functions, or duties of the business or profession for which the license  
3 was issued.

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

9 (c) A conviction within the meaning of this section means a plea or  
10 verdict of guilty or a conviction following a plea of nolo contendere. Any action that  
11 a board is permitted to take following the establishment of a conviction may be taken  
12 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  
14 imposition of sentence, irrespective of a subsequent order under the provisions of  
15 Section 1203.4 of the Penal Code."

16 6. Section 4022 of the Code states:

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

19 (a) Any drug that bears the legend: "Caution: federal law prohibits  
20 dispensing without prescription," "Rx only," or words of similar import.

21 (b) Any device that bears the statement: "Caution: federal law restricts  
22 this device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of  
23 similar import, the blank to be filled in with the designation of the practitioner  
24 licensed to use or order use of the device.

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

27 7. Section 4060 of the Code states:

28 "No person shall possess any controlled substance, except that furnished  
to a person upon the prescription of a physician, dentist, podiatrist, optometrist,  
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant  
to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a  
nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to  
Section 4052.1 or 4052.2. This section shall not apply to the possession of any  
controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician,  
podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers  
correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse  
practitioner, a physician assistant, or a naturopathic doctor, to order his or her own  
stock of dangerous drugs and devices."

8. Section 4300 of the Code provides, in pertinent part, that every license issued by the  
Board is subject to discipline, including suspension or revocation, and that the Board may refuse a

1 license to any applicant guilty of unprofessional conduct.

2 9. Section 4301 of the Code states:

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

7 . . . .

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

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

13 (h) The administering to oneself, of any controlled substance, or the use  
14 of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
15 dangerous or injurious to oneself, to a person holding a license under this chapter, or  
16 to any other person or to the public, or to the extent that the use impairs the ability of  
17 the person to conduct with safety to the public the practice authorized by the license.

18 . . . .

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

21 (k) The conviction of more than one misdemeanor or any felony  
22 involving the use, consumption, or self-administration of any dangerous drug or  
23 alcoholic beverage, or any combination of those substances.

24 (l) The conviction of a crime substantially related to the qualifications,  
25 functions, and duties of a licensee under this chapter. The record of conviction of a  
26 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
27 States Code regulating controlled substances or of a violation of the statutes of this  
28 state regulating controlled substances or dangerous drugs shall be conclusive  
evidence of unprofessional conduct. In all other cases, the record of conviction shall  
be conclusive evidence only of the fact that the conviction occurred. 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 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  
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.

. . . .

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

**REGULATORY PROVISIONS**

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.”

**DANGEROUS DRUG**

11. “Methamphetamine,” is a CNS (central nervous system) stimulant, is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

**FIRST CAUSE FOR DENIAL OF APPLICATION**

**(Convictions of Substantially-Related Crimes)**

12. Respondent's application is subject to denial under Code sections 4300, 4301, subdivision (l) and 480, subdivisions (a)(1), and (B) and 490, subdivisions (a), (b), and (c), in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of crimes substantially related to the qualifications, functions or duties of a pharmacy technician, as follows:

a. On or about December 10, 2005, after pleading *nolo contendere*, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 14604, subdivision (a) [knowingly allowing an unlicensed driver to drive one's vehicle], in the criminal proceeding entitled *People of the State of California v. Joseph Raymond Aros* (Super. Ct. Los Angeles County, 2005, No. 5VN03059). The Court placed Respondent on probation for 24 months, with various terms and conditions. The circumstances surrounding the conviction are that:

b. On or about June 12, 2005, Respondent knowingly permitted an unlicensed driver to drive a vehicle which Respondent owned.

c. On or about March 29, 2005, after pleading *nolo contendere*, Respondent was convicted of one felony count of violating Health and Safety Code section 11377, subdivision (a)

1 [possession of a controlled substance], in the criminal proceeding entitled *People of the State of*  
2 *California v. Joseph Raymond Aros* (Super. Ct. Los Angeles County, 2005, No. PA047482). The  
3 Court placed Respondent on probation for 36 months, and ordered him to participate in a drug  
4 treatment and/or substance abuse counseling program, among other terms and conditions. The  
5 circumstances surrounding the conviction are that:

6 d. On or about February 24, 2004, Respondent was stopped by Los Angeles Police  
7 Department officers working Devonshire Patrol, after they observed that Respondent had failed to  
8 stop at a stop sign. During this traffic stop, Respondent was observed to have chapped lips, burnt  
9 lips, burnt fingertips, was sweating profusely, and was speaking rapidly. The officers formed the  
10 expert opinion that Respondent was likely under the influence of a CNS stimulant, probably  
11 methamphetamine. The officers conducted a search incident to arrest, and recovered from  
12 Respondent's front pocket a plastic bag containing a white crystalline substance resembling  
13 methamphetamine. Respondent was booked and arrested for possession of a controlled  
14 substance. After obtaining a search warrant, officers searched Respondent's residence, and  
15 recovered a handgun, ammunition, more methamphetamine, marijuana, a "pays and owes"  
16 document, scales, and several dangerous fire works, among other items.

17 **SECOND CAUSE FOR DENIAL OF APPLICATION**

18 **(Acts Warranting Denial of a License)**

19 13. Respondent's application is subject to denial under Code section 4301, subdivision  
20 (p), and 480, subdivision (a)(3), in that Respondent committed acts which if done by a licentiate  
21 would be grounds for suspension or revocation of his license as follows:

22 a. On or about March 29, 2005 and December 10, 2005, Respondent was convicted of  
23 crimes substantially related to the qualifications, functions, or duties of a pharmacy technician,  
24 which to a substantial degree evidence his present or potential unfitness to perform the functions  
25 authorized by his license in a manner consistent with the public health, safety, or welfare, in  
26 violation of section 490 and 4301, subdivision (l), in conjunction with California Code of  
27 Regulations, title 16, section 1770.

28 b. On or about March 29, 2005, Respondent was convicted of a crime and committed

1 dishonest acts by having in his possession a controlled substance. Complainant refers to, and by  
2 this reference incorporates, the allegations set forth above in paragraph 12, subdivisions (a) and  
3 (d), as though set forth in full here.

4 **THIRD CAUSE FOR DENIAL OF APPLICATION**

5 **(Dishonest Acts)**

6 14. Respondent's application is subject to denial under sections 480, subdivisions (2),  
7 (3)(A), and 4301, subdivision (f), in that Respondent was convicted of crimes that involved  
8 dishonest acts. Furthermore, Respondent provided false information on his application, by  
9 denying under penalty of perjury that he had ever been convicted of any criminal offense, as set  
10 forth in Paragraphs 2 and 12, subsections (a) through (d), which are incorporated by reference as  
11 though set forth in full here.

12 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

13 **(Possession of a Controlled Substance/Dangerous Drug)**

14 15. Respondent's application is subject to denial under sections 4022, subdivisions (a), (b)  
15 and (c) and 4060, 4300, and 4301, subdivisions (h), (j), and (k), in that Respondent engaged in  
16 unprofessional conduct and was convicted of a crime involving possession of a controlled  
17 substance as set forth in Paragraph 12, subsections (c) and (d), which are incorporated by  
18 reference as though set forth in full here.

19 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

20 **(Providing False Information on an Application for Licensure)**

21 16. Respondent's application is subject to denial under sections 480, subdivisions (2),  
22 (3)(A) and (c), and 4301, subdivision (g), in that Respondent certified under penalty of perjury in  
23 his application for licensure that he had not been convicted of any criminal offense, which was  
24 untrue, as set forth above in Paragraphs 2 and 12, subsections (a) through (d), which are  
25 incorporated by reference as though set forth in full here.

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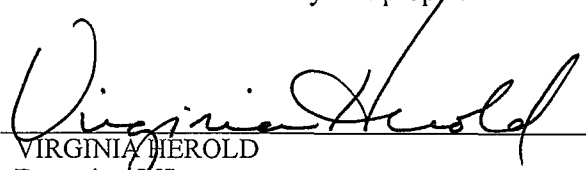
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PRAYER

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 Respondent for a Pharmacy Technician License; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 5/10/10



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

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