

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JOSHUA A. ROOM  
Deputy Attorney General  
4 State Bar No. 214663  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1299  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

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

10 In the Matter of the Statement of Issues Against: Case No. 3922.

11 **MARIA GUADALUPE MAGANA**  
12 **11 N. Delaware Street**  
13 **San Mateo, CA 94401**

**STATEMENT OF ISSUES**

14 **Applicant for Registered Pharmacist License**

15 Respondent.

16 Complainant alleges:

17 PARTIES

- 18 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official  
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 20 2. On or about July 21, 2010, the Board of Pharmacy, Department of Consumer Affairs  
21 received an Application for Pharmacist Licensure and Examination from Maria Guadalupe  
22 Magana (Respondent). On or about July 13, 2010, Respondent certified under penalty of perjury  
23 as to the truthfulness of all statements, answers, and representations in the application. The Board  
24 denied the application on or about October 18, 2010.

25 JURISDICTION

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

STATUTORY AND REGULATORY PROVISIONS

4. Section 4300, subdivision (c), 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 . . . .”

5. Section 4301 of the Code provides, in pertinent part, that “unprofessional conduct” is defined to include, but not be limited to, any of the following:

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

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.

6. Section 480 of the Code 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. . . . Any action which a board is permitted to take following the establishment of a conviction may be taken . . . irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

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

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

“The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the . . . [license].”

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

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

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

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11 FIRST CAUSE FOR DENIAL OF APPLICATION

12 (Conviction of Substantially Related Crime(s))

13 8. Respondent's application is subject to denial under the following section(s) of the  
14 Code: 480(a)(1); 480(a)(3) by reference to 4301(l); and/or 4300(c) by reference to 4301(l) and  
15 California Code of Regulations, title 16, section 1770, for conviction of a substantially related  
16 crime, in that on or about October 3, 2008, in *People v. Maria Guadalupe Magana*, Case No.  
17 NM378488 in San Mateo County Superior Court, Respondent was convicted of violating Vehicle  
18 Code section 23152(b) (Driving with blood alcohol level of 0.08% or more), a misdemeanor, with  
19 a finding pursuant to Vehicle Code section 23578 for having a level of 0.15% or more, as follows:

20 a. On or about July 20, 2008, Respondent was observed to have significant signs  
21 of intoxication while driving an automobile, including that: she passed out behind the wheel; she  
22 was unable to effectively operate the vehicle; she lacked coordination and was groggy; and she  
23 smelled of alcohol. She was detained and arrested by Daly City (CA) Police.

24 b. On or about September 2, 2008, Respondent was charged by Complaint in Case  
25 No. NM378488 under (1) Vehicle Code section 23152(a) (Driving under influence of alcohol), a  
26 misdemeanor, and (2) Vehicle Code section 23152(b) (Driving with blood alcohol of 0.08% or  
27 more), a misdemeanor, with a special allegation pursuant to Vehicle Code section 23578 for  
28 having a blood alcohol level of 0.15% or more.

1 c. On or about October 3, 2008, Respondent pleaded nolo contendere and was  
2 convicted of the second count in the Complaint, violation of Vehicle Code section 23152(b)  
3 (Driving with blood alcohol of 0.08% or more), a misdemeanor, and also admitted to the special  
4 allegation pursuant to Vehicle Code section 23578 of having a blood alcohol level of 0.15% or  
5 more. She was sentenced to thirty (30) days in county jail, as well as fines and fees.

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7 SECOND CAUSE FOR DENIAL OF APPLICATION

8 (Dangerous or Injurious Use of Alcohol)

9 9. Respondent's application is subject to denial under the following section(s) of the  
10 Code: 480(a)(3) by reference to 4301(h); and/or 4300(c) by reference to 4301(h), in that, as  
11 described in paragraph 8 above, Respondent made dangerous or injurious use of alcohol.

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13 THIRD CAUSE FOR DENIAL OF APPLICATION

14 (Unprofessional Conduct)

15 10. Respondent's application is subject to denial under the following section(s) of the  
16 Code: 480(a)(3) by reference to 4301; and/or 4300(c) by reference to 4301, in that, as described  
17 in paragraph 8 above, Respondent engaged in unprofessional conduct.

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19 OTHER FACTS RELEVANT TO APPLICATION

20 11. As additional facts relevant to the application for licensure by Respondent Magana,  
21 Complainant alleges that on or about November 18, 1994, in the criminal case *People v. Maria*  
22 *Guadalupe Magana*, Case No. 01542941 in San Francisco County Superior Court, Respondent  
23 was convicted of a substantially related crime, namely violating Vehicle Code section 23152(a)  
24 (Driving while under the influence of alcohol), a misdemeanor.

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26 PRAYER

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

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1. Denying the application of Maria Guadalupe Magana (Respondent) for licensure and examination as a Registered Pharmacist;

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

DATED: 12/17/10 Virginia Herold

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

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