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

12 In the Matter of the Statement of Issues
13 Against:

Case No. 3952

14 **EDWARD JUAN RUIZ**
15 **4238 Via Largo**
Cypress, CA 90630

STATEMENT OF ISSUES

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 October 12, 2009, the Board of Pharmacy, Department of Consumer
23 Affairs received an application for a Pharmacy Technician Registration from Edward Juan Ruiz
24 (Respondent). On or about September 21, 2009, Edward Juan Ruiz certified under penalty of
25 perjury to the truthfulness of all statements, answers, and representations in the application. One
26 month later, on or about October 20, 2009, Respondent was arrested for possession of more than
27 28.5 grams of marijuana, in violation of Health and Safety Code section 11357, subdivision (c).
28 The Board denied the application on August 18, 2010.

JURISDICTION

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

4. Section 4300, subdivision (c) of the Code states, in pertinent part, that 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.

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

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

....

STATUTORY PROVISIONS

6. Section 480 of the Code states:

(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.

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

(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.

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

4

5 7. Section 482 of the Code states:

6 Each board under the provisions of this code shall develop criteria to evaluate
7 the rehabilitation of a person when:

8 (a) Considering the denial of a license by the board under Section 480; or

9 (b) Considering suspension or revocation of a license under Section 490.

10 Each board shall take into account all competent evidence of rehabilitation
11 furnished by the applicant or licensee.

12 8. Section 492 of the Code states:

13 Notwithstanding any other provision of law, successful completion of any
14 diversion program under the Penal Code, or successful completion of an alcohol and
15 drug problem assessment program under Article 5 (commencing with section
16 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
17 agency established under Division 2 ([Healing Arts] commencing with Section 500)
18 of this code, or any initiative act referred to in that division, from taking disciplinary
19 action against a licensee or from denying a license for professional misconduct,
20 notwithstanding that evidence of that misconduct may be recorded in a record
21 pertaining to an arrest.

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

25 9. Section 4301 of the Code states:

26 The board shall take action against any holder of a license who is guilty of
27 unprofessional conduct or whose license has been procured by fraud or
28 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
not 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.

. . . .

(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. . . .

1 **REGULATORY PROVISIONS**

2 10. California Code of Regulations, title 16, section 1768 states:

3 (a) Where the board has denied an application for a license, the earliest date on
4 which the applicant may reapply for a license is one year after the effective date of
the denial.

5 (b) All competent evidence of rehabilitation presented will be considered upon
6 a reapplication. The board shall use the criteria listed in section 1769 when
considering evidence of rehabilitation.

7 11. California Code of Regulations, title 16, section 1769 states:

8 (a) When considering the denial of a facility or personal license under Section
9 480 of the Business and Professions Code, the board, in evaluating the rehabilitation
10 of the applicant and his present eligibility for licensing or registration, will consider
the following criteria:

11 (1) The nature and severity of the act(s) or offense(s) under consideration as
grounds for denial.

12 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
13 under consideration as grounds for denial under Section 480 of the Business and
Professions Code.

14 (3) The time that has elapsed since commission of the act(s) or crime(s)
15 referred to in subdivision (1) or (2).

16 (4) Whether the applicant has complied with any terms of parole, probation,
restitution or any other sanctions lawfully imposed against the applicant.

17 (5) Evidence, if any, of rehabilitation submitted by the applicant.

18

19 12. California Code of Regulations, title 16, section 1770 states:

20 For the purpose of denial, suspension, or revocation of a personal or facility
21 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
22 Professions Code, a crime or act shall be considered substantially related to the
23 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.

24 **DRUG**

25 13. Marijuana is a Schedule I controlled substance as designated by Health and Safety
26 Code section 11054, subdivision (d)(13), and is a dangerous drug pursuant to Business &
27 Professions Code section 4022.

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1 **FACTUAL ALLEGATIONS**

2 14. On or about October 20, 2009, Respondent was a passenger in a vehicle that was
3 stopped for a traffic violation by the Los Angeles County Sheriff's Department. Upon contact
4 with the occupants, the deputy noted a strong odor of marijuana emitting from the vehicle. All
5 four occupants were directed to exit the vehicle and a search was conducted. Two marijuana
6 cigarettes were found in the door handle next to where Respondent was sitting. A plastic bag
7 containing approximately 1.5 ounces of marijuana and a pill bottle containing marijuana was
8 located in the trunk. Respondent admitted that all of the marijuana belonged to him. Another
9 passenger in the vehicle was arrested for possession for sale of 29 tablets of Ecstasy.

10 15. As a result of the above arrest, on or about July 6, 2010, in the matter of *People of*
11 *the State of California v. Edward Juan Ruiz*, in Orange County Superior Court, case number
12 OBF00227, Respondent pled guilty to violating Health and Safety Code section 11357,
13 subdivision (c), possession of more than 28.5 grams of marijuana, a misdemeanor.

14 16. As a result of the guilty plea, the court deferred entry of judgment for a period of
15 18 months. Respondent was ordered to enroll in and attend an approved controlled substance
16 treatment program, and pay a diversion restitution fee of \$100.

17 **CAUSE FOR DENIAL OF APPLICATION**

18 **(Commission of Unprofessional Acts)**

19 17. Respondent's application for registration as a pharmacy technician is subject to denial
20 under section 480, subdivisions (a)(3)(A) and (a)(3)(B), and section 4301, subdivisions (h) and (j)
21 of the Code in that Respondent committed acts, that if done by a licensed pharmacy technician,
22 would be grounds for suspension or revocation of the license in that he possessed and self-
23 administered an illegal controlled substance in violation of the statutes of this state.

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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 of Pharmacy issue a decision:

1. Denying the application of Edward Juan Ruiz for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 5/27/11 Virginia Herold

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

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