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7 *Attorneys for Complainant*

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:
12 **ALFONSO LANDUZURI**
13 7641 Emerald Avenue
Fontana, CA 92336
14
15 Respondent.

Case No. 3955

STATEMENT OF ISSUES

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 December 16, 2009, the Board of Pharmacy (Board) received an
21 application for registration as a Pharmacy Technician from Alfonso Landuzuri (Respondent). On
22 or about December 15, 2009, Respondent certified under penalty of perjury to the truthfulness of
23 all statements, answers, and representations in the application. The Board denied the application
24 on June 29, 2010.

25 **JURISDICTION**

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

STATUTORY PROVISIONS

4. Section 480 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. 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.

(B) 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 business or profession for which application is made.

....

"(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 the license."

5. Section 490 states, in pertinent part:

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

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under

1 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
2 of the business or profession for which the licensee's license was issued.

3 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
4 conviction following a plea of nolo contendere. Any action that a board is permitted to take
5 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
6 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
7 made suspending the imposition of sentence, irrespective of a subsequent order under the
8 provisions of Section 1203.4 of the Penal Code."

9 6. Section 4300 provides in pertinent part, that every license issued by the Boards is
10 subject to discipline, including suspension or revocation."

11 7. Section 4301 states, in pertinent part:

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

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

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

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

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1 "l) The conviction of a crime substantially related to the qualifications, functions, and
2 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
3 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
4 substances or of a violation of the statutes of this state regulating controlled substances or
5 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
6 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
7 The board may inquire into the circumstances surrounding the commission of the crime, in order
8 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
9 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
10 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
11 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
12 of this provision. The board may take action when the time for appeal has elapsed, or the
13 judgment of conviction has been affirmed on appeal or when an order granting probation is made
14 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
15 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
16 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
17 indictment.

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19 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
20 violation of or conspiring to violate any provision or term of this chapter or of the applicable
21 federal and state laws and regulations governing pharmacy, including regulations established by
22 the board or by any other state or federal regulatory agency.

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

24 **REGULATORY PROVISIONS**

25 8. California Code of Regulations, title 16, section 1770 states, in pertinent part:

26 "For the purpose of denial, suspension, or revocation of a personal or facility license
27 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
28 crime or act shall be considered substantially related to the qualifications, functions or duties of a

1 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
2 licensee or registrant to perform the functions authorized by his license or registration in a manner
3 consistent with the public health, safety, or welfare."

4 9. **CONTROLLED SUBSTANCE**

5 "Amphetamine," is a Schedule II controlled substance as designated by Health and Safety
6 Code section 11055, subdivision (d)(1) and is categorized as a dangerous drug pursuant to
7 section 4022.

8 **FIRST CAUSE FOR DENIAL OF APPLICATION**

9 **(Convictions of Crimes)**

10 10. Respondent's application is subject to denial under section 480, subdivision (a)(1), in
11 that Respondent was convicted of crimes as follows:

12 a. On or about June 04, 2008, after pleading guilty, Respondent was convicted of one
13 felony count of violating Penal Code section 475, subdivision (c) [forgery] in the criminal
14 proceeding entitled *The State of California v. Alfonso Landazuri* (Super.Ct. San Bernardino
15 County, 2008, No. FSB704053). The Court sentenced Respondent to serve 3 days in San
16 Bernardino County jail and placed him on 36 months probation, with terms and conditions. The
17 circumstances surrounding the conviction are that on or about July 3, 2007, Respondent possessed
18 a completed check, money order, traveler's check, warrant and county order, with the intent to
19 utter and pass and facilitate the utterance and a passage of the same, in order to defraud a person.

20 b. On or about June 4, 2008, after pleading guilty, Respondent was convicted of one
21 misdemeanor count of violating Health and Safety Code section 11550, subdivision (a) [under the
22 influence of a controlled substance] in the criminal proceeding entitled *The State of California v.*
23 *Alfonso Landazuri* (Super.Ct. San Bernardino County, 2008, No. MSB706082). The Court
24 sentenced Respondent to serve 90 days in San Bernardino County jail, ordered pronouncement of
25 judgment withheld, and condition and revocable release granted for a period of 24 months, with
26 terms and conditions. The circumstances surrounding the conviction are that on or about July 2,
27 2007, Respondent was found to be under the influence of a controlled substance, to wit,
28 Amphetamine.

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SECOND CAUSE FOR DENIAL OF APPLICATION

(Acts Involving Dishonesty, Fraud, or Deceit)

11. Respondent's application is subject to denial under section 480, subdivision (a)(2), in that Respondent committed dishonest acts, fraud, or deceit with the intent to substantially benefit himself, or substantially injure another. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 10, subparagraph (a), as though set forth fully.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Knowingly Made a False Statement of Fact)

12. Respondent's application is subject to denial under sections 480, subdivision (c), in that on or about December 15, 2009, Respondent knowingly made a false statement of fact by failing to disclose two convictions in 1998, on his application for licensure. In addition, Respondent signed under penalty of perjury, under the laws of the State of California, that the foregoing was true and correct, on his application for licensure. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraph 10, subparagraphs (a) and (b), inclusive, as though set forth fully.

FOURTH CAUSE FOR DENIAL OF APPLICATION

(Acts Warranting Denial of Licensure)

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

a. Respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a pharmacy technician which to a substantial degree evidence his present or potential unfitness to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare, in violation of sections 4301, subdivision (l) and 490, in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 10, subparagraphs (a) and (b), inclusive, as though set forth fully.

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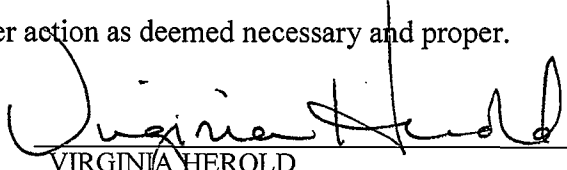
1 b. On or about July 2, 2007, Respondent was found to be under the influence of a
2 controlled substance, to wit: Amphetamine, in violation of section 4301, subdivisions (h) and (j).
3 Complainant refers to, and by this reference incorporates, the allegations set forth above in
4 paragraph 10, subparagraph (b), as though set forth fully.

5 **PRAYER**

6 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
7 and that following the hearing, the Board issue a decision:

- 8 1. Denying the application of Respondent for Registration as a Pharmacy Technician;
9 and
10 2. Taking such other and further action as deemed necessary and proper.

11 DATED: 3/19/12


12 VIRGINIA HEROLD
13 Executive Officer
14 Board of Pharmacy
15 Department of Consumer Affairs
16 State of California
17 *Complainant*

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