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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
12 Against:

Case No. 4097

13 **SILVIA NUNEZ, AKA SILVIA CAZARES**
12548 Rocking Horse Ct.
14 Victorville, CA 92392

STATEMENT OF ISSUES

15 Applicant for Pharmacy Technician
16 Registration

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about September 21, 2010, the Board of Pharmacy (Board) received an
24 application for a Pharmacy Technician Registration from Silvia Nunez (Respondent). On or
25 about August 26, 2010, Respondent certified under penalty of perjury to the truthfulness of all
26 statements, answers, and representations in the application. The Board denied the application on
27 March 1, 2011.

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1 **JURISDICTION**

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

5 **STATUTORY PROVISIONS**

6 4. Section 480 provides, in pertinent part:

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

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

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

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18 5. Section 4300, subdivision (c), provides, in pertinent part, that the Board "may refuse
19 a license to any applicant guilty of unprofessional conduct."

20 6. Section 4301 provides, in pertinent part, that "unprofessional conduct includes, but is
21 not limited to, any of the following:"

22

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

26

27 "(l) The conviction of a crime substantially related to the qualifications, functions, and
28 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13

1 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
2 substances or of a violation of the statutes of this state regulating controlled substances or
3 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
4 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
5 The board may inquire into the circumstances surrounding the commission of the crime, in order
6 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
7 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
8 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
9 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
10 of this provision.

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12 **REGULATORY PROVISIONS**

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

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

20 **FIRST CAUSE FOR DENIAL OF APPLICATION**

21 **(Criminal Conviction)**

22 8. Respondent's application is subject to denial under section 480, subdivision (a)(1), in
23 conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was
24 convicted of a crime substantially related to the qualifications, functions, and duties of a
25 pharmacy technician. The circumstances are as follows:

26 a. On or about September 25, 2009, in the federal criminal matter entitled
27 *United States v. Silvia Cazares* (C.D. Cal., 2008, No. CR 08-708-VBF), Respondent entered a
28 plea of guilty and was convicted of one felony count of violating United States Code, title 18,

1 section 4 [misprision of a felony]. Respondent was fined and placed on probation for a period of
2 five (5) years.

3 b. The circumstances surrounding the conviction are that from July 2005 to
4 September 2007, Respondent's husband engaged in a scheme to defraud customers of the online
5 service CarsDirect.com out of hundreds of thousands of dollars. Respondent had knowledge of
6 her husband's unlawful activities; however, she failed to report them to law enforcement officials
7 and, in fact, attempted to conceal those activities from law enforcement by manipulating certain
8 bank accounts.

9 **SECOND CAUSE FOR DENIAL OF APPLICATION**

10 **(Acts Involving Dishonesty, Fraud or Deceit)**

11 9. Respondent's application is subject to denial under section 480, subdivision (a)(2), in
12 that Respondent has engaged in acts involving dishonesty, fraud or deceit with the intent to
13 substantially benefit herself or another, or substantially injure another. Complainant refers to, and
14 by this reference incorporates, the allegations set forth above in paragraph 8, subparagraphs a and
15 b, inclusive, as though set forth fully herein.

16 **THIRD CAUSE FOR DENIAL OF APPLICATION**

17 **(Unprofessional Conduct)**

18 10. Respondent's application is subject to denial under section 4300, subdivision (c), in
19 conjunction with section 4301, subdivisions (f) and (l), in that respondent has engaged in
20 unprofessional conduct. Complainant refers to, and by this reference incorporates, the allegations
21 set forth above in paragraph 8, subparagraphs a and b, inclusive, as though set forth fully herein.

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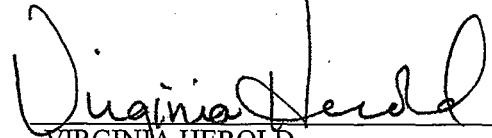
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PRAYER

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 Silvia Nunez for registration as a Pharmacy Technician;
- and
2. Taking such other and further action as deemed necessary and proper.

DATED: 11/9/11



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

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