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7	BEFORE THE	
8	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS	
9	STATE OF CALIFORNIA	
10	In the Matter of the Statement of Issues Case No. 4157	
11	Against:	
12	KARINA SERRANO307 Rodriguez AvenueSTATEMENT OF ISSUES	~
13	Shaffer, CA 93263	
14	Pharmacy Technician Applicant	
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	ĺ
20	("Board").	
21	2. On or about September 14, 2010, the Board received an application for a Pharmacy	
22	Technician License from Karina Serrano ("Respondent"). On or about September 7, 2010,	
23	Karina Serrano certified under penalty of perjury to the truthfulness of all statements, answers,	
24	and representations in the application. The Board denied the application on June 21, 2011.	
25	JURISDICTION AND STATUTORY PROVISIONS	
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 ("Code") unless	
28	otherwise indicated.	
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4. Section 480 of the Code states, in pertinent part: 1 2 "(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following: 3 (1) Been convicted of a crime. A conviction within the meaning of this 4 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 5 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 6 the provisions of Section 1203.4 of the Penal Code. 7 (2) Done any act involving dishonesty, fraud, or deceit with the intent to 8 substantially benefit himself or herself or another, or substantially injure another. 9 (3)10 (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. 11 (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 12 business or profession for which application is made." 13 Section 4300, subdivision (c) of the Code states, in pertinent part" 5. 14 "The board may refuse a license to any applicant guilty of unprofessional 15 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." 16 6. Section 4301 states, in pertinent part: 17 18 "The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or 19 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following: 20 21 (f) The commission of any act involving moral turpitude, dishonesty, 22 fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not. 23 24 (h) The administering to oneself, of any controlled substance, or the use 25 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 26 the person to conduct with safety to the public the practice authorized by the license. 27 28 2

(1) The conviction of a crime substantially related to the qualifications, 1 functions, and duties of a licensee... The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in 2 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, 3 functions, and duties of a licensee under this chapter." 7. Section 490 of the Code states: 4 5 "(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 6 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 7 was issued. 8 (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 9 authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the 10 licensee's license was issued. 11 (c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a 12 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 13 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 14 Penal Code. 15 (d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in Petropoulos v. Department of Real 16 Estate (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm 17 to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an 18 independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not 19 constitute a change to, but rather are declaratory of, existing law." **REGULATORY PROVISIONS** 20 8. 21 California Code of Regulations, title 16, section 1770, states: 22 "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 23 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 24 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 25 consistent with the public health, safety, or welfare." 111 26 27 111 111 28 3

## FIRST CAUSE FOR DENIAL OF APPLICATION

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## (Conviction of Substantially Related Crimes)

9. Respondent's application is subject to denial under section 480, subdivision (a)(1) of the Code and section 4300, subdivision (c) of the Code as defined in section 4301, subdivision (l) of the Code, 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 registered pharmacy technician, as follows:

10. On or about April 25, 2011, after pleading nolo contendere, Respondent was 8 convicted of one misdemeanor count of violating Vehicle Code section 25152(a) [drive while 9 under the influence of alcohol/drugs] in the criminal proceeding entitled The People of the State 10 of California v. Karina Serrano (Super. Ct. Kern County, 2011, No. BM785903A). The Court 11 sentenced Respondent to two (2) days in jail, placed her on three (3) years probation with terms 12 and conditions, and ordered her to complete TAASK 3-month DUI School and Victim Impact 13 Panel. The circumstances underlying the conviction are that on or about April 1, 2011, 14 Respondent drove a vehicle while under the influence of a tested 0.173% blood alcohol level and 15 with an expired driver's license. 16

17 11. On or about February 8, 2011, after pleading guilty, Respondent was convicted of two (2) misdemeanor counts, Count 1, of violating Penal Code section 148(a)(1) [resisting arrest], 18 and Count 2, violating Vehicle Code section 14601.1(a) [drive with a suspended/revoked license] 19 in the criminal proceeding entitled The People of the State of California v. Karina Serrano 20 (Super. Ct. Kern County, 2008, No. BM731039A). The Court sentenced Respondent to one (1) 21 22 day in jail, and placed her on three (3) years probation with terms and conditions. The circumstances underlying the conviction are that on or about April 27, 2008, Respondent drove a 23 vehicle while having a suspended license, and during the enforcement stop, she was 24 argumentative and resisted the officers. 25

26 12. On or about February 8, 2011, after pleading guilty, Respondent was convicted of one
27 count of violating Penal Code section 476A(a) [nonsufficient funds/checks over \$200] in the
28 criminal proceeding entitled *The People of the State of California v. Karina Serrano* (Super. Ct.

Kern County, 2006, No. BM696654A). The Court sentenced Respondent to one (1) day in jail,
placed her on three (3) years probation with terms and conditions, and ordered her to pay \$640.71
restitution. The circumstances underlying the conviction are that in exchange for services and / or
merchandise, Respondent wrote checks that were returned as insufficient funds by her banking
institution on June 25, 2004, Check No. 1164 to Price Less Clothing for \$5.71, and on October
29, 2004, Check No. 1053 to Stockdale Vet Hospital for \$600.00.

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## SECOND CAUSE FOR DENIAL OF APPLICATION

# (Acts Involving Dishonesty, Fraud, or Deceit)

9 13. Respondent's application is subject to denial under section 480, subdivision (a)(2) of 10 the Code and section 4300, subdivision (c) of the Code as defined in section 4301, subdivision (f) 11 of the Code in that Respondent committed acts involving dishonesty, fraud, or deceit with the 12 intent to substantially benefit herself and / or substantially injure another when she wrote checks 13 that were returned as insufficient funds and drove without a valid license. The conduct is 14 described in more particularity in paragraphs 10 through 12 above, inclusive and herein 15 incorporated by reference.

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# THIRD CAUSE FOR DENIAL OF APPLICATION

## (Unprofessional Conduct: Dangerous Use of Alcohol)

18 14. Respondent's application is subject to denial under section 480, subdivision (a)(2) of
19 the Code and section 4300, subdivision (c) of the Code as defined in section 4301, subdivision (h)
20 of the Code in that Respondent committed unprofessional conduct when she used alcoholic
21 beverages to the extent or in a manner as to be dangerous or injurious to herself and the public.
22 The conduct is described in more particularity in paragraph 10 above, inclusive and herein
23 incorporated by reference.

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# FOURTH CAUSE FOR DENIAL OF APPLICATION

(Act Which if Done by Licentiate Would be Cause for Discipline)
15. Respondent's application is subject to denial under section 480, subdivision (a)(3)(A)
of the Code as defined in section 4301, subdivision (f) of the Code in that Respondent committed
acts involving dishonesty, fraud or deceit, acts that if done by a licentiate of the business or

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profession in question, would be grounds for suspension or revocation of license. The conduct is described in more particularity in paragraphs 10 through 12 above, inclusive and herein incorporated by reference.

16. Respondent's application is subject to denial under section 480, subdivision (a)(3)(A) of the Code as defined in section 4301, subdivision (h) of the Code in that Respondent used alcohol in a manner or to an extent as to be dangerous to herself and the public, an act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license. The conduct is described in more particularity in paragraph 10 above, inclusive and herein incorporated by reference.

17. Respondent's application is subject to denial under section 480, subdivision (a)(3)(A)
of the Code as defined in section 490, subdivision (a) of the Code and section 4301, subdivision
(1) of the Code in conjunction with California Code of Regulations, title 16, section 1770 in that
Respondent was convicted of substantially related crimes, acts that if done by a licentiate of the
business or profession in question, would be grounds for suspension or revocation of license. The
conduct is described in more particularity in paragraphs 10 through 12 above, inclusive and
herein incorporated by reference.

#### <u>PRAYER</u>

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,19 and that following the hearing, the Board issue a decision:

1. Denying Karina Serrano's Pharmacy Technician License Application; and

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

5/29/12 DATED:

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

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