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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:

Case No. 4159

12 **NOEL MAGANA**
13 10301 Pinehurst Avenue
14 Southgate, CA 90280

STATEMENT OF ISSUES

15 Applicant for Pharmacy Technician
16 Registration.

17 Respondent.

18
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 October 28, 2010, the Board of Pharmacy (Board) received an
24 application for Pharmacy Technician Registration from Noel Magana (Respondent). On or about
25 October 21, 2010, Noel Magana 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 May 25, 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 475 provides, in pertinent part:

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

9

10 "(2) Conviction of a crime.

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

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

15 "(b) Notwithstanding any other provisions of this code, the provisions of this division
16 shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and
17 (2) of subdivision (a).

18 "(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good
19 moral character or any similar ground relating to an applicant's character, reputation, personality,
20 or habits."

21 5. Section 480 provides, in pertinent part:

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

24 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
25 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
26 board is permitted to take following the establishment of a conviction may be taken when the
27 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
28 an order granting probation is made suspending the imposition of sentence, irrespective of a

1 subsequent order under the provisions of Section 1203.4 of the Penal Code.

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

4 "(3) "(A) Done any act that if done by a licentiate of the business or profession in
5 question, would be grounds for suspension or revocation of license.

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

9 6. Section 490 provides, in pertinent part:

10 "(a) In addition to any other action that a board is permitted to take against a licensee, a
11 board may suspend or revoke a license on the ground that the licensee has been convicted of a
12 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
13 or profession for which the license was issued.

14 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
15 discipline a licensee for conviction of a crime that is independent of the authority granted under
16 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
17 of the business or profession for which the licensee's license was issued.

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

24 7. Section 4300 provides, in pertinent part, that every license issued by the Board is
25 subject to discipline, including suspension or revocation.

26 8. Section 4301 provides, in pertinent part:

27 "The board shall take action against any holder of a license who is guilty of unprofessional
28 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

1 Unprofessional conduct shall include, but is not limited to, any of the following:

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

6

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

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

1 by this reference incorporates, the allegations contained in paragraph 10, above, subparagraph (a),
2 inclusive, as though set forth fully.

3 **THIRD CAUSE FOR DENIAL OF APPLICATION**

4 **(Acts Warranting Denial of Licensure)**

5 12. Respondent's application is subject to denial under sections 4301, subdivision (p) and
6 475, subdivision (a)(4), 480, subdivisions (a)(3)(A) and (a)(3)(B), in that Respondent committed
7 acts which if done by a licentiate of the business and profession in question, would be grounds for
8 suspension or revocation of his license. The acts are as follows:

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

16 b. Respondent admitted, in written correspondence with the Board, that he has
17 possessed marijuana on various occasions and has had to deal with criminal court cases and
18 convictions for those acts. In the correspondence, Respondent specifically stated that he has been
19 "convicted various times in the past for possession of marijuana . . . which is considered a
20 misdemeanor." He also admitted that he "paid fines . . . and went to court ordered classes" as part
21 of the court cases.

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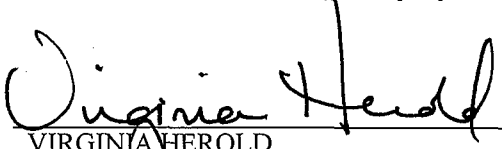
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PRAYER

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 Noel Magana as a Pharmacy Technician; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 8/22/12


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

LA2011601379