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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  
Against:

Case No. 4227

13 **ERIK ESCALANTE PEREZ**  
14 129 W. Park Avenue  
15 San Ysidro, CA 92173

**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 December 7, 2010, the Board of Pharmacy, Department of Consumer  
23 Affairs received an application for a Pharmacy Technician registration from Erik Escalante Perez  
24 (Respondent). On or about December 2, 2010, Respondent certified under penalty of perjury to  
25 the truthfulness of all statements, answers, and representations in the application. The Board  
26 denied the application on October 6, 2011.

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7. Section 482 of the Code states:

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

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

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

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

9. Section 4301 of the Code states:

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 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

.....  
(f) The commission of any act involving moral turpitude, dishonesty, 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.

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

.....  
(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a

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

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### 19 REGULATORY PROVISIONS

20 10. California Code of Regulations, title 16, section 1769 states:

21 (a) When considering the denial of a facility or personal license under Section  
22 480 of the Business and Professions Code, the board, in evaluating the rehabilitation  
23 of the applicant and his present eligibility for licensing or registration, will consider  
24 the following criteria:

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

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

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

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

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

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

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 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 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.

1 DRUG

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

5 FIRST CAUSE FOR DENIAL OF APPLICATION

6 **(March 30, 2006 Criminal Conviction for Possession of Marijuana for Sale)**

7 13. Respondent's application for registration as a pharmacy technician is subject to denial  
8 under section 480, subdivision (a)(1) and (a)(3)(A) of the Code in that Respondent was convicted  
9 of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy  
10 technician, which would also be grounds for discipline for a licensed pharmacy technician under  
11 Code section 4301(l). The circumstances are as follows:

12 a. On or about March 30, 2006, in a criminal proceeding entitled *People v. Erik*  
13 *Perez*, in San Diego County Superior Court, case number CS201270, Respondent was convicted  
14 on his plea of guilty to violating Health and Safety Code section 11359, possession of marijuana  
15 for sale, a felony.

16 b. As a result of the conviction, on or about March 30, 2006, Respondent was  
17 sentenced to serve 82 days in jail and pay fines, fees, and restitution.

18 c. The facts and circumstances that led to the conviction are that in March 2006,  
19 while Respondent was in Mexico, he agreed to drive a car with marijuana in it across the border  
20 and into the United States for money.

21 SECOND CAUSE FOR DENIAL OF APPLICATION

22 **(Act Involving Dishonesty, Fraud, or Deceit)**

23 14. Respondent's application is subject to denial under sections 480, subdivision (a)(2)  
24 and 480(a)(3)(A) of the Code in that he committed an act of dishonesty, fraud and/or deceit when  
25 in March 2006, he attempted to smuggle marijuana into the United States, as detailed in  
26 paragraph 13, above, which would be grounds for discipline for a licensed pharmacy technician  
27 under Code section 4301(l).

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