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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
Against:

Case No. 4296

12 **SERGIO TRY ADAMO**

STATEMENT OF ISSUES

13 960 Domain Way
14 Redding, California 96003

15 **Pharmacy Technician Registration**

16 Respondent.

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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 August 24, 2011, the Board of Pharmacy (Board), Department of
23 Consumer Affairs received an application for Registration as a Pharmacy Technician from Sergio
24 Try Adamo (Respondent). On or about August 17, 2011, Sergio Try Adamo certified under
25 penalty of perjury to the truthfulness of all statements, answers, and representations in the
26 application. The Board denied the application on or about February 3, 2012.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board of Pharmacy, Department of Consumer
3 Affairs, under the authority of the following laws. All sections references are to the Business and
4 Professions Code unless otherwise indicated.

5 **STATUTORY PROVISIONS**

6 4. Section 477 of the Code states:

7 As used in this division:

8 (a) "Board" includes "bureau," "commission," "committee,"
9 "department," "division," "examining committee," "program," and "agency."

10 (b) "License" includes certificate, registration or other means of engage in
a business or profession regulated by this code.

11 5. Section 480 states, in pertinent part:

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

14 (1) Been convicted of a crime. A conviction within the meaning of this
15 section means a plea or verdict of guilty or a conviction following a plea of nolo
16 contendere. Any action that a board is permitted to take following the establishment
17 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.

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19 (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.

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

22 (b) Notwithstanding any other provision of this code, no person shall be
23 denied a license solely on the basis that he or she has been convicted of a felony if he
or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing
24 with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
convicted of a misdemeanor if he or she has met all applicable requirements of the
25 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
person when considering the denial of a license under subdivision (a) of Section 482.

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1 6. Section 493 of the Code states:

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

13 7. Section 4301 states in relevant part, that:

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

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

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25 (k) The conviction of more than one misdemeanor or any felony
26 involving the use, consumption, or self-administration of any dangerous drug or
27 alcoholic beverage, or any combination of those substances.

28 (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
 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
 States Code regulating controlled substances or of a violation of the statutes of this
 state regulating controlled substances or dangerous drugs shall be conclusive
 evidence of unprofessional conduct. In all other cases, the record of conviction shall
 be conclusive evidence only of the fact that the conviction occurred. The board may
 inquire into the circumstances surrounding the commission of the crime, in order to
 fix the degree of discipline or, in 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, functions, and duties of a licensee under this
 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
 contendere is deemed to be a conviction within the meaning of this provision. The
 board may take action 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
 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
 dismissing the accusation, information, or indictment.

1 **COST RECOVERY**

2 8. Code section 125.3 provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Conviction of Crimes)**

8 9. Respondent's application is subject to denial under Code section 480, subdivision
9 (a)(1), Section 493, and Section 480 subdivision (a)(3)(A) for violation of Code section 4301,
10 subdivisions (l), in that Respondent was convicted of crimes that are substantially related to the
11 qualifications, functions, and duties of a pharmacy technician, as follows:

12 10. On or about November 24, 2008, in a criminal proceeding entitled *People of the State*
13 *of California v. Sergio Try Adamo*, in the Superior Court of California, County of Shasta, Case
14 Number 08-09115, Respondent was convicted of one count of violating Vehicle Code Section
15 23152 (b) (driving while having a 0.08% or higher blood alcohol), a misdemeanor and one count
16 Section 14601.2 (a) (driving when privilege suspended-prior DUI conviction), a misdemeanor.
17 The circumstances of the crime are that on or about October 11, 2008, Respondent did willfully
18 and unlawfully, while under the influence of an alcoholic beverage, drive a vehicle with a blood
19 alcohol content of .21/.22.

20 11. On or about May 21, 2007, in a criminal proceeding entitled *People of the State of*
21 *California v. Sergio Try Adamo*, in the Superior Court of California, County of Shasta, Case
22 Number 07-00859, Respondent was convicted of one count of violating Vehicle Code Section
23 23152 (b) (driving while having a 0.08% or higher blood alcohol), a misdemeanor. The
24 circumstances of the crime are that on or about January 4, 2007, Respondent did willfully and
25 unlawfully, while under the influence of an alcoholic beverage, drive a vehicle with a blood
26 alcohol content of .08% or higher.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Use of Alcoholic Beverages in a Manner Dangerous or Injurious to Oneself or Others)**

3 12. Respondent's application is subject to denial under Code section 480 subdivision
4 (a)(3)(A) for violation of Code section 4301, subdivision (h), in that Respondent used alcohol
5 beverages to the extent or in a manner as to be dangerous or injurious to oneself . . . or to any
6 other person or to the public, as alleged in paragraphs 10 and 11.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Multiple Convictions)**

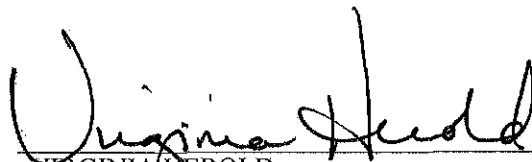
9 13. Respondent's application is subject to denial under Code section 480 subdivision
10 (a)(3)(A) for violation of Code section 4301, subdivision (k), in that Respondent has been
11 convicted of more than one misdemeanor or any felony involving the use, consumption, or self-
12 administration of an alcoholic beverage, as alleged in paragraphs 10 and 11.

13 **PRAYER**

14 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
15 and that following the hearing, the Board of Pharmacy issue a decision:

- 16 1. Denying the application of Sergio Try Adamo for a Pharmacy Technician
17 Registration and,
- 18 2. Taking such other and further action as deemed necessary and proper.

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22 DATED: 3/26/13



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

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