

1 Kamala D. Harris  
Attorney General of California  
2 JANICE K. LACHMAN  
Supervising Deputy Attorney General  
3 BRIAN S. TURNER  
Deputy Attorney General  
4 State Bar No. 108991  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 445-0603  
Facsimile: (916) 327-8643  
7 E-mail: Brian.Turner@doj.ca.gov  
*Attorneys for Complainant*

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

12 In the Matter of the Statement of Issues Against:

Case No. 4354

13 **SIMON GEBREMICHAEL**  
14 aka SIMON BERHE GEBREMICAEL  
4671 N. Glenn #12  
Fresno, California 93727

**STATEMENT OF ISSUES**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about May 26, 2011, the Board received an application for Registration as a  
23 Pharmacy Technician from Simon Gebremichael also known as Simon Berhe Gebremicael  
24 (Respondent). On or about March 15, 2011, Respondent certified under penalty of perjury to the  
25 truthfulness of all statements, answers, and representations in the application. The Board denied  
26 the application on March 8, 2012.

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1 **JURISDICTION**

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

5 **STATUTORY PROVISIONS**

6 4. Section 475 states, in pertinent part:

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

9 (1) Knowingly making a false statement of material fact, or knowingly  
10 omitting the state of a material fact, in an application for a license.

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  
18 of conviction has been affirmed on appeal, or when an order granting probation is  
19 made suspending the imposition of sentence, irrespective of a subsequent order under  
20 the provisions of Section 1203.4 of the Penal Code.

21 (2) Done any act involving dishonesty, fraud or deceit with the intent to  
22 substantially benefit himself or herself or another, or substantially injure another;

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

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

28 (b) Notwithstanding any other provision of this code, no person shall be  
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  
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  
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.

6. Section 4301 states in relevant part, that:

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

1 not limited to, any of the following:

2  
3 (f) The commission of any act involving moral turpitude, dishonesty,  
4 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.

5 (g) Knowingly making or signing any certificate or other document that  
6 falsely represents the existence or nonexistence of a state of facts.

7 ....

8 (l) The conviction of a crime substantially related to the qualifications,  
9 functions, and duties of a licensee under this chapter. .... In all other cases, the  
10 record of conviction shall be conclusive evidence only of the fact that the conviction  
11 occurred. .... A plea or verdict of guilty or a conviction following a plea of nolo  
12 contendere is deemed to be a conviction within the meaning of this provision. The  
board may take action . . . when an order granting probation is made suspending the  
13 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  
14 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,  
15 information, or indictment.

### 16 **FIRST CAUSE FOR DENIAL**

#### 17 **(Conviction of Crime)**

18 7. Respondent's application is subject to denial under Code sections 480(a)(1),  
19 480(a)(3)(A) and 4301(l), on the grounds Respondent was convicted of crimes that are  
20 substantially related to the qualifications, functions, and duties of a pharmacy technician, as  
follows:

21 8. On or about February 11, 2008, in a criminal proceeding in the Superior Court of  
22 California, County of Fresno Central Division, Case Number F07909167, Respondent was  
23 convicted by his plea of nolo contendere to one count of violating Penal Code Sections 664/459/  
24 460(b), a felony. The circumstances of the crime are that on or about December 1, 2007,  
25 Respondent attempted to unlawfully enter a 76 gas station while armed with a semi-automatic  
26 handgun.

27 9. On or about January 22, 2007, in a criminal proceeding in the Superior Court of  
28 California, County of Fresno Central Division, Case Number F06909961, Respondent was

1 convicted by his plea of nolo contendere of one count of violation of Penal Code Section 459/  
2 460(b) (2nd degree burglary), a misdemeanor. The circumstances of the crime are that on or  
3 about and between December 15 and December 20, 2006, Respondent forged the name of Derrick  
4 McElveen on a fraudulent check written for the amount of \$4,950.0, on a Wells Fargo checking  
5 account application. Respondent attempted to withdraw the full amount but was only permitted  
6 to withdraw one hundred dollars until the fraudulent check cleared. Respondent was arrested  
7 while attempting to withdrawal money from the account.

8 **SECOND CAUSE FOR DENIAL**

9 **(Making False Statements)**

10 10. Respondent's application is subject to denial under Code section 475(a) (1), and  
11 Section 480(a)(3)(A) Section 4301(g) because Respondent failed to disclose two criminal  
12 convictions in his application. The application for Pharmacy Technician license has a specific  
13 question about past criminal convictions. On or about March 15, 2011, Respondent signed his  
14 application under penalty of perjury and denied he had been convicted of crime. The true facts  
15 are Respondent had two prior convictions, as set forth in paragraphs 8 and 9.

16 **THIRD CAUSE FOR DENIAL**

17 **(Act Involving Moral Turpitude)**

18 11. Paragraphs 8 through 10 are incorporated herein as though set forth at length.  
19 Respondent's application is subject to denial under Code sections 480(a)(2), 480 (a)(3)(A) and  
20 4301(f) because Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit,  
21 or corruption, as set forth in paragraphs 8, 9, and 10.

22 **PRAYER**

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

25 1. Denying the application of Simon Gebremichael, also known as Simon Berhe  
26 Gebremicael, for an Pharmacy Technician Registration and,

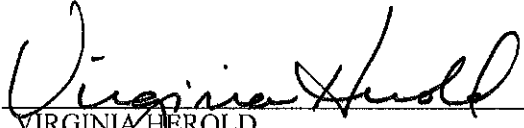
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2. Taking such other and further action as deemed necessary and proper.

DATED: 4/4/13



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

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