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

11 In the Matter of the Statement of Issues
12 Against:

Case No. 4429

13 **CINDY EUGENIA RIVERA**
14 **a.k.a CINDY EGUENIA RIVERA**
15 **a.k.a CINDY N. RIVERA**
16 **a.k.a CINDY RIVERA**

STATEMENT OF ISSUES

Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about April 13, 2012, the Board of Pharmacy (Board) received an application
22 for Registration as a Pharmacy Technician from Cindy Eugenia Rivera, also known as Cindy
23 Eguenia Rivera, Cindy N. Rivera, and Cindy Rivera (Respondent). On or about March 13, 2012,
24 Cindy Rivera certified under penalty of perjury to the truthfulness of all statements, answers, and
25 representations in the application. The Board denied the application on July 26, 2012.

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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 480 states:

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

9 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
10 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
11 board is permitted to take following the establishment of a conviction may be taken when the
12 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
13 an order granting probation is made suspending the imposition of sentence, irrespective of a
14 subsequent order under the provisions of Section 1203.4 of the Penal Code.

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

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

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

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

1 "(c) A board may deny a license regulated by this code on the ground that the applicant
2 knowingly made a false statement of fact required to be revealed in the application for the
3 license."

4 5. Section 490 states, in pertinent part:

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

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

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

19 6. Section 4300 provides, in pertinent part, that every license issued by the Board is
20 subject to discipline, including suspension or revocation.

21 7. Section 4301 states, in pertinent part:

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

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

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

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

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

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

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

“(p) Actions or conduct that would have warranted denial of a license.”

REGULATORY PROVISION

8. California Code of Regulations, title 16, section 1770, states, in pertinent part:

"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...."

FIRST CAUSE FOR DENIAL OF APPLICATION

(Convictions of Substantially Related Crimes)

9. Respondent's application is subject to denial under section 480, subdivision (a)(1), in that Respondent was convicted of crimes as follows:

a. On or about January 7, 2010, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08% or more, by weight, of alcohol in her blood] in the criminal proceedings entitled *The People of the State of California v. Cindy N. Rivera* (Super. Ct. Los Angeles County, 2009, No. 9PS03159). The Court sentenced Respondent to 96 hours jail, placed Respondent on 36 months probation, ordered Respondent to complete an 18-Month Alcohol Program, and pay fines and penalties.

b. The circumstances surrounding the conviction are that on or about July 3, 2009, Respondent was contacted by California Highway Patrol (CHP), for not being able to maintain her position within the lane. While speaking to Respondent, the officer detected the odor of an

1 alcoholic beverage emitting from Respondent's breath and person. Respondent was observed to
2 have red and watery eyes. When asked how much she had to drink, Respondent first denied
3 drinking any alcoholic beverages, but later admitted to consuming "one cup of Hefenwizen."
4 During the booking procedure, Respondent submitted to a breath test that resulted in breath-
5 alcohol content level of .12% on the first and second reading.

6 c. On or about July 13, 2007, after pleading nolo contendere, Respondent was convicted
7 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving
8 while having 0.08% or more, by weight, of alcohol in her blood, to wit, 0.12%] in the criminal
9 proceedings entitled *The People of the State of California v. Cindy Eugenia Rivera* (Super. Ct.
10 Los Angeles County, 2007, No. 7VY02387). The Court placed Respondent on 36 months
11 probation, ordered Respondent to complete a First-Offender Alcohol Program, and to complete
12 the Hospital and Morgue Program, and pay fines and penalties.

13 d. The circumstances surrounding the conviction are that on or about May 25, 2007,
14 Respondent was contacted by California Highway Patrol (CHP), for driving at a high rate of
15 speed while unsafely swerving in and out of lanes and nearly colliding with CHP officers. The
16 CHP officer gave Respondent multiple instructions to safely exit the freeway, so that they could
17 administer a traffic stop. Respondent failed to immediately comply with the instructions. While
18 speaking to Respondent, officers detected the odor of an alcoholic beverage emitting from
19 Respondent's breath and person. Respondent was observed to be disoriented, red and watery
20 eyes, and her speech was slurred. When asked how much she had to drink, Respondent stated she
21 "had two Corona beers." During the booking procedure, Respondent submitted to a breath test
22 that resulted in breath-alcohol content level of .12% on the first and second reading.

23 **SECOND CAUSE FOR DENIAL OF APPLICATION**

24 **(Knowingly Made a False Statement)**

25 10. Respondent's application is subject to denial under sections 480, subdivision (a)(2),
26 and 4301, subdivisions (f) and (g), in that Respondent knowingly made a false statement of fact,
27 that was certified under penalty of perjury by failing to disclose her 2007 conviction case on her
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1 application for licensure. Complainant refers to, and by this reference incorporates, the allegations
2 set forth in paragraph 9, subparagraphs c and d, above as though set forth fully.

3 **THIRD CAUSE FOR DENIAL OF APPLICATION**

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

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

9 a. Respondent was convicted of crimes substantially related to the qualifications,
10 functions, or duties of a pharmacy technician which to a substantial degree evidence her present
11 or potential unfitness to perform the functions authorized by her license in a manner consistent
12 with the public health, safety, or welfare, in violation of sections 4031, subdivision (l), and 490,
13 in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,
14 and by this reference incorporates, the allegations set forth above in paragraph 9, subparagraphs a
15 through d, inclusive, as though set forth fully.

16 b. Respondent used alcoholic beverages to an extent or in a manner dangerous or
17 injurious to herself, another person, or the public, in violation of section 4301, subdivision (h).
18 Complainant refers to, and by this reference incorporates, the allegations set forth above in
19 paragraph 9, subparagraphs a through d, inclusive, as though set forth fully.

20 c. Respondent was convicted of crimes involving the consumption of alcoholic
21 beverages, in violation of section 4301, subdivision (k). Complainant refers to, and by this
22 reference incorporates, the allegations set forth above in paragraph 9, subparagraphs a through d,
23 inclusive, as though set forth fully.

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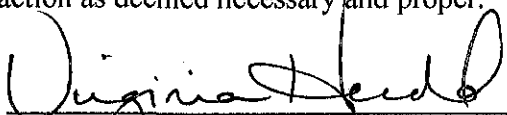
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PRAAYER

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 Respondent for registration as a Pharmacy Technician;
- and
2. Taking such other and further action as deemed necessary and proper.

DATED: 3/1/13



VIRGINIA K. HEROLD
Executive Officer
Board of Pharmacy
State of California
Complainant

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