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8	BEFORE THE		
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS		
10	STATE OF CALIFORNIA		
11	In the Matter of the Statement of Issues	Case No. 4507	
12	Against:	Case No. 4307	
13	MARICELA MENDOZA	OT A TENENTE OF LOCKIES	
		STATEMENT OF ISSUES	
14	Pharmacy Technician Registration Applicant		
15 16	Respondent.		
17			
18	Complainant alleges:		
19	PARTIES		
20	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 September 30, 2011, the Board of Pharmacy, Department of Consumer		
23			
	Affairs received an application for a Pharmacy Technician Registration from Maricela Mendoza		
24	(Respondent). On or about August 1, 2011, Maricela Mendoza certified under penalty of perjury		
25	to the truthfulness of all statements, answers, and representations in the application. The Board		
26	denied the application on August 31, 2012.		
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JURISDICTION

- 3. This Statement of Issues is brought before the Board of Pharmacy (Board),
 Department of Consumer Affairs, under the authority of the following laws. All section
 references are to the Business and Professions Code unless otherwise indicated.
 - 4. Section 118 of the Code states, in pertinent part:
- "(a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground."

STATUTORY AND REGULATORY PROVISIONS

- 5. Section 4300, subdivision (c), of the Code states:
- "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy"
- 6. Section 4301 of the Code provides, in pertinent part, that "unprofessional conduct" is defined to include, but not be 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.
- "(1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter."
 - 7. Section 480 of the Code states:
- "(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

- "(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment 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.
- "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.
- "(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.
- "(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made."
 - 8. Section 492 of the Code states:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest."

9. 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.'"

10. 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."

FIRST CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct)
(Bus. & Prof. Code §§ 480, subd. (a)(2), 4301, subd. (f))

11. Respondent's application is subject to denial under Code sections 480, subdivision (a)(2), and 4301, subdivision (f), in that Respondent engaged in unprofessional conduct involving dishonesty, fraud, or deceit when Respondent was arrested for violating Penal Code section 484, subdivision (a) (petty theft). The circumstances are that on or about November 11, 2003, Respondent was at the Macy's store in Modesto, California. A Macy's loss prevention officer observed Respondent select two items of merchandise from one department and walk over to the children's department. After selecting a black shirt, Respondent met up with three other unidentified female juveniles. Respondent then went into the children's fitting room with one of the unidentified juveniles. The unidentified juvenile handed Respondent a gray, plastic Anchor Blue shopping bag. The Macy's loss prevention officer observed Respondent conceal the merchandise in the Anchor Blue shopping bag. Respondent then walked out of the store with the bag. Once outside, Respondent was approached by the Macy's loss prevention officer and

escorted back into the store. Respondent had \$140.98 worth of Macy's merchandise in her possession. The loss prevention officer called the Modesto Police Department. A Modesto police officer arrived and interviewed Respondent regarding the incident. Respondent admitted that she took the items from Macy's and that she intended to take them without paying.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct)

(Bus. & Prof. Code §§ 480, subd. (a)(2), 4301, subd. (f))

- 12. Respondent's application is subject to denial under Code sections 480, subdivision (a)(2), and 4301, subdivision (f), in that Respondent engaged in unprofessional conduct involving dishonesty, fraud, or deceit when Respondent was arrested by an officer from the Antioch Police Department and charged with violating Penal Code sections 484e(a) (theft of access card or account information), 470(a) (forgery), 460(b) (burglary), 484g (fraudulent use of access cards or account information), and 503 (embezzlement). The circumstances are as follows:
- 13. On or about January 13, 2009, a Loss Prevention Supervisor at Macy's in Antioch, California called the Antioch Police Department (APD) to report that she had taken Respondent into custody for suspected theft. Respondent was also a Macy's employee at the time. An APD officer responded to the scene and met separately with the Loss Prevention Supervisor and Respondent. The officer learned that on or about January 11, 2009, a Macy's customer used their credit card to make a purchase at Macy's. The customer inadvertently left his credit card at the store and Respondent subsequently used the card to purchase two \$500 Macy's gift cards. When the Macy's Loss Prevention office contacted Wells Fargo regarding the credit card that Respondent had used, they learned that the credit card had been reported as lost or stolen. Macy's Loss Prevention then contacted the owner of the card, and he confirmed that he did not make the gift card purchases, and he had not given anyone authorization to use his card. Respondent admitted that she used the credit card to purchase the two \$500 gift cards and to make a purchase at another store. Respondent stated that she gave one of the two \$500 gift cards to her boyfriend, and she used the other \$500 gift card to purchase a purse and a pair of pants.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct)
(Bus. & Prof. Code §§ 480, subd. (a)(3), 4301)

- 14. Respondent's application is subject to denial under Code sections 480, subdivision (a)(3), and 4301, as defined by California Code of Regulations, title 16, section 1770, in that Respondent engaged in unprofessional conduct substantially related to the qualifications, functions, and duties of a licensee or registrant. The circumstances are as follows:
- Police Department Special Investigation Unit with a covert investigation targeting Internet prostitution. In conducting this investigation, the officers obtained four hotel rooms at the Extended Stay Deluxe hotel in Pleasanton. Two of the officers responded to an Internet advertisement placed on a website by a woman later identified as Respondent. The officers asked Respondent if she was available for out-call service and for a couples arrangement. Respondent said that she was available and agreed to meet the officers at Extended Stay Deluxe in Pleasanton. Respondent arrived at the hotel room and met with the two officers in an undercover room that was being monitored by a covert surveillance system. The surveillance system provided picture and sound to the arrest team in the adjacent room. Respondent agreed to have sex with both of the officers for the exchange of money. Respondent was subsequently arrested for violating Penal Code section 647, subdivision (b) (engaging and agreeing to engage in prostitution).

FOURTH CAUSE FOR DENIAL OF APPLICATION

(Conviction of Substantially Related Crime) (Bus. & Prof. Code §§ 480, subd. (a)(1), 4301, subd. (l))

16. Respondent's application is subject to denial under Code sections 480, subdivision (a)(1), and 4301, subdivision (l), as defined by California Code of Regulations, title 16, section 1770, in that Respondent was convicted of crime substantially related to the qualifications, functions or duties of a licensee or registrant. The circumstances are that on or about March 19, 2010, in a criminal action entitled *The People of the State of California v. Maricela Mendoza*, in the Alameda County Superior Court, Docket No. 133208, Respondent was convicted by plea of no contest of violating Penal Code section 647, subdivision (b) (engaging and agreeing to engage

1	in prostitution), a misdemeanor. Respondent was sentenced to two days in jail and three years of	
2	probation, and was ordered to take an AIDS test.	
3	<u>PRAYER</u>	
4	WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this	
5	Statement of Issues, and that following the hearing, the Board of Pharmacy issue a decision:	
6	1. Denying the application of Maricela Mendoza for a Pharmacy Technician	
7	Registration; and	
8	2. Taking such other and further action as deemed necessary and proper.	
9	DATED: 2 12 13 Nennesterd of VIRGINIA HEROLD Executive Officer	
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11	Board of Pharmacy Department of Consumer Affairs	
12	State of California Complainant	
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