

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SUSANA A. GONZALES
Deputy Attorney General
4 State Bar No. 253027
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2221
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

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

11 In the Matter of the Statement of Issues
Against:
12 **MARICELA MENDOZA**
13
14 **Pharmacy Technician Registration**
15 **Applicant**
16 Respondent.

Case No. 4507

STATEMENT OF ISSUES

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 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.

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

7 “(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
8 benefit himself or herself or another, or substantially injure another.

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

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

14 8. Section 492 of the Code states:

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

23 9. Section 493 of the Code states:

24 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
25 the department pursuant to law to deny an application for a license or to suspend or revoke a
26 license or otherwise take disciplinary action against a person who holds a license, upon the
27 ground that the applicant or the licensee has been convicted of a crime substantially related to the
28 qualifications, functions, and duties of the licensee in question, the record of conviction of the

1 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
2 and the board may inquire into the circumstances surrounding the commission of the crime in
3 order to fix the degree of discipline or to determine if the conviction is substantially related to the
4 qualifications, functions, and duties of the licensee in question.

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

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

8 "For the purpose of denial, suspension, or revocation of a personal or facility license
9 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
10 crime or act shall be considered substantially related to the qualifications, functions or duties of a
11 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
12 licensee or registrant to perform the functions authorized by his license or registration in a manner
13 consistent with the public health, safety, or welfare."

14 FIRST CAUSE FOR DENIAL OF APPLICATION

15 (Unprofessional Conduct)

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

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

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

5 SECOND CAUSE FOR DENIAL OF APPLICATION

6 (Unprofessional Conduct)

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

8 12. Respondent's application is subject to denial under Code sections 480, subdivision
9 (a)(2), and 4301, subdivision (f), in that Respondent engaged in unprofessional conduct involving
10 dishonesty, fraud, or deceit when Respondent was arrested by an officer from the Antioch Police
11 Department and charged with violating Penal Code sections 484e(a) (theft of access card or
12 account information), 470(a) (forgery), 460(b) (burglary), 484g (fraudulent use of access cards or
13 account information), and 503 (embezzlement). The circumstances are as follows:

14 13. On or about January 13, 2009, a Loss Prevention Supervisor at Macy's in Antioch,
15 California called the Antioch Police Department (APD) to report that she had taken Respondent
16 into custody for suspected theft. Respondent was also a Macy's employee at the time. An APD
17 officer responded to the scene and met separately with the Loss Prevention Supervisor and
18 Respondent. The officer learned that on or about January 11, 2009, a Macy's customer used their
19 credit card to make a purchase at Macy's. The customer inadvertently left his credit card at the
20 store and Respondent subsequently used the card to purchase two \$500 Macy's gift cards. When
21 the Macy's Loss Prevention office contacted Wells Fargo regarding the credit card that
22 Respondent had used, they learned that the credit card had been reported as lost or stolen. Macy's
23 Loss Prevention then contacted the owner of the card, and he confirmed that he did not make the
24 gift card purchases, and he had not given anyone authorization to use his card. Respondent
25 admitted that she used the credit card to purchase the two \$500 gift cards and to make a purchase
26 at another store. Respondent stated that she gave one of the two \$500 gift cards to her boyfriend,
27 and she used the other \$500 gift card to purchase a purse and a pair of pants.
28

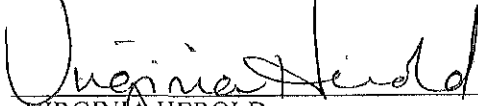
1 in prostitution), a misdemeanor. Respondent was sentenced to two days in jail and three years of
2 probation, and was ordered to take an AIDS test.

3 PRAYER

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


10 VIRGINIA HEROLD
11 Executive Officer
12 Board of Pharmacy
13 Department of Consumer Affairs
14 State of California
15 Complainant

14 SF2012901185
15 90280508.doc