1 2 3 4 5 6 7 8	KAMALA D. HARRIS Attorney General of California MARC D. GREENBAUM Supervising Deputy Attorney General CHRISTINA THOMAS Deputy Attorney General State Bar No. 171168 300 So. Spring Street, Suite 1702 Los Angeles, CA 90013 Telephone: (213) 897-2557 Facsimile: (213) 897-2804 Attorneys for Complainant	
9	BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
11 12	In the Matter of the Statement of Issues Against: Case No. 4508 STATEMENT OF ISSUES	
13	MELINDA CASTRO, Respondent.	
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16	Complainant alleges:	
17	PARTIES 1. Wind in H. 1160 and in the State of Language and device have official	
18	1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official	
19 20	capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.	
21	2. On or about May 31, 2011, the Board of Pharmacy (Board) received an application	
22	for a Pharmacy Technician Registration from Melinda Castro (Respondent). On or about May 17, 2011, Respondent certified under penalty of perjury to the truthfulness of all statements,	
23	answers, and representations in the application. The Board denied the application on September	
24	13, 2012.	
25	JURISDICTION	
26	3. This Statement of Issues is brought before the Board under the authority of the	
27	following laws. All section references are to the Business and Professions Code unless otherwise	
28	indicated.	

STATUTORY PROVISIONS

- 4. Section 480 states, in pertinent part:
- "(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.
- "(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.
- "(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.
- "(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license."

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5. Section 490 states, in pertinent part:

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

- "(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.
- "(c) 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."
- 6. Section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.
 - 7. Section 4301 states, in pertinent part:

"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 not limited to, any of the following:

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

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The conviction of a crime substantially related to the qualifications, functions, and "(l) 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.

. . . .

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

REGULATORY PROVISIONS

8. 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."

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FIRST CAUSE FOR DENIAL OF APPLICATION

(Convictions of Crimes)

- 9. Respondent's application is subject to denial under section 480, subdivision (a)(1), in that Respondent was convicted of crimes, as follows:
- On or about January 16, 2013, after pleading guilty, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08% and more, by weight, of alcohol in her blood in the criminal proceedings entitled The People of the State of California v. Melinda Castro (Super. Ct. Ventura County, 2013, No. 2011032022). The Court sentenced Respondent to serve 3 days in Ventura County Jail and placed her on 36 months formal probation, with terms and conditions. The circumstances surrounding the conviction are that on or about September 5, 2011, the Oxnard Police Department received a call regarding an individual who was passed out or sleeping in the drive thru of a Taco Bell. When the officers arrived, an employee of Taco Bell advised them the driver had just driven off and that there was an unrestrained child in the front seat. The employee was able to provide the officers with the license plate number of the vehicle. The officers were able to locate the address of the registered owner where Respondent was contacted. Officers arrived at the home and found Respondent in a locked room eating Taco Bell with a small child. While speaking to Respondent the officer smelled a strong odor of alcohol emitting from her breath and body. She was observed to have slurred speech and her eyes were extremely dilated. During the booking procedure, Respondent submitted to a blood test that resulted in a blood-alcohol-content level of 0.21%.
- b. On or about May 16, 2012, after pleading guilty, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 14601, [driving while driving privileges are suspended or revoked] in the criminal proceedings entitled *The People of the State of California v. Melinda Castro* (Super. Ct. Ventura County, 2012, No. 2012014718). The Court sentenced Respondent to serve 5 days in Ventura County Jail and placed her on 36 months probation, with terms and conditions. The circumstances surrounding the conviction are that on or about March 20, 2012, Respondent drove a vehicle while her driving privileges were suspended or revoked.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Knowingly Made a False Statement of Fact)

10. Respondent's application is subject to denial under section 480, subdivision (c), in that on or about May 17, 2011, Respondent knowingly made a false statement of fact by failing to disclose her 2012 conviction case against her, on her application for licensure. In addition, Respondent signed under penalty of perjury, under the laws of the State of California, that the forgoing was true and correct, on her application for licensure. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraph 9, subparagraph (b), as though set forth fully.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Acts Warranting Denial of Licensure)

- 11. Respondent's application is subject to denial under sections 4301, subdivision (p) and 480, subdivisions (a)(3)A) and (a)(3)(B), in that Respondent committed acts which if done by a licentiate of the business and profession in question, would be grounds for suspension or revocation of her license as follows:
- a. Respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a pharmacy technician which to a substantial degree evidence her present or potential unfitness to perform the functions authorized by her license in a manner consistent with the public health, safety, or welfare, in violation of sections 4031, subdivision (l), and 490, in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 11, subparagraphs (a) and (b), inclusive, as though set forth fully.
- b. Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to herself, another person, or the public, in violation of section 4301, subdivision (h). Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 9, subparagraph (a), as though set forth fully.

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PRAYER

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 Melinda Castro for a Pharmacy Technician Registration;
- 2. Taking such other and further action as deemed necessary and proper.

DATED: 7/22/13

VIRGINIA HEROLD Executive Officer Board of Pharmacy

Department of Consumer Affairs

State of California Complainant

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