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

13 In the Matter of the Statement of Issues
Against:

Case No. 4595

14 **LINDSEY NICOLE MOORE**

STATEMENT OF ISSUES

15 **Pharmacy Technician Registration**
16 **Applicant,**

Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about March 28, 2012, the Board of Pharmacy, Department of Consumer
24 Affairs received an application for a Pharmacy Technician Registration from Lindsey Nicole
25 Moore (Respondent). On or about December 1, 2011, Lindsey Nicole Moore certified under
26 penalty of perjury to the truthfulness of all statements, answers, and representations in the
27 application. The Board denied the application on January 18, 2013.

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1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Board of Pharmacy (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code (Code) unless otherwise indicated.

5 4. Section 4300 of the Code provides, in pertinent part, that the Board may refuse a
6 license to any applicant guilty of unprofessional conduct. The Board may, in its sole discretion,
7 issue a probationary license to any applicant for a license who is guilty of unprofessional conduct
8 and who has met all other requirements for licensure.

9 **STATUTORY PROVISIONS**

10 5. Section 475 of the Code states:

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

13 (1) Knowingly making a false statement of material fact, or knowingly
14 omitting to state a material fact, in an application for a license.

15 (2) Conviction of a crime.

16 (3) Commission of any act involving dishonesty, fraud or deceit with the
17 intent to substantially benefit himself or another, or substantially injure another.

18 (4) Commission of any act which, if done by a licentiate of the business or
19 profession in question, would be grounds for suspension or revocation of license.

20 (b) Notwithstanding any other provisions of this code, the provisions of this
21 division shall govern the suspension and revocation of licenses on grounds specified
22 in paragraphs (1) and (2) of subdivision (a).

23 (c) A license shall not be denied, suspended, or revoked on the grounds of a
24 lack of good moral character or any similar ground relating to an applicant's
25 character, reputation, personality, or habits.

26 6. Section 480 of the Code states:

27 (a) A board may deny a license regulated by this code on the grounds that the
28 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.

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

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

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

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

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

18 7. Section 482 of the Code states:

19 Each board under the provisions of this code shall develop criteria to evaluate
20 the rehabilitation of a person when:

21 (a) Considering the denial of a license by the board under Section 480; or

22 (b) Considering suspension or revocation of a license under Section 490.

23 Each board shall take into account all competent evidence of rehabilitation
24 furnished by the applicant or licensee.

25 8. Section 493 of the Code states:

26 Notwithstanding any other provision of law, in a proceeding conducted by a
27 board within the department pursuant to law to deny an application for a license or to
28 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."

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1 9. Section 4301 of the Code states:

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

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

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

16 (l) The conviction of a crime substantially related to the qualifications,
17 functions, and duties of a licensee under this chapter. The record of conviction of a
18 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
19 States Code regulating controlled substances or of a violation of the statutes of this
20 state regulating controlled substances or dangerous drugs shall be conclusive
21 evidence of unprofessional conduct. In all other cases, the record of conviction shall
22 be conclusive evidence only of the fact that the conviction occurred. The board may
23 inquire into the circumstances surrounding the commission of the crime, in order to
24 fix the degree of discipline or, in the case of a conviction not involving controlled
25 substances or dangerous drugs, to determine if the conviction is of an offense
26 substantially related to the qualifications, functions, and duties of a licensee under this
27 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
28 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.

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769 states:

 (a) When considering the denial of a facility or personal license under Section
480 of the Business and Professions Code, the board, in evaluating the rehabilitation
of the applicant and his present eligibility for licensing or registration, will consider
the following criteria:

 (1) The nature and severity of the act(s) or offense(s) under consideration as
grounds for denial.

1 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under
2 consideration as grounds for denial under Section 480 of the Business and Professions
Code.

3 (3) The time that has elapsed since commission of the act(s) or crime(s) referred
4 to in subdivision (1) or (2).

5 (4) Whether the applicant has complied with any terms of parole, probation,
restitution or any other sanctions lawfully imposed against the applicant.

6 (5) Evidence, if any, of rehabilitation submitted by the applicant.

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8 11. California Code of Regulations, title 16, section 1770 states:

9 For the purpose of denial, suspension, or revocation of a personal or facility
10 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
11 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
12 functions authorized by his license or registration in a manner consistent with the
public health, safety, or welfare.

13 **FIRST CAUSE FOR DENIAL OF APPLICATION**

14 **(November 8, 2005 Criminal Conviction for DUI on August 24, 2005)**

15 12. Respondent's application for licensure is subject to denial under section 480,
16 subdivisions (a)(1) and (a)(3)(A) of the Code in that she was convicted of a crime that is
17 substantially related to the qualifications, duties, and functions of a registered pharmacy
18 technician, and would be a ground for discipline under section 4301, subdivision (l) of the Code
19 for a registered pharmacy technician. The circumstances are as follows:

20 a. On or about November 8, 2005, in a criminal proceeding entitled *People of the*
21 *State of California vs. Lindsey Nicole Moore*, in San Diego County Superior Court, case number
22 CN200502,, Respondent was convicted on her plea of guilty to violating Vehicle Code section
23 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor, a charge made in
24 lieu of the original count of violating Vehicle Code section 23153, subdivision (a), driving under
25 the influence and causing bodily injury, a felony. Pursuant to a plea agreement, the court
26 dismissed additional counts of violating Penal Code section 273a, subdivision (a), felony child
27 abuse, and Vehicle Code section 23152, subdivision (b), driving with a blood alcohol
28 concentration (BAC) of .08 percent or more, a misdemeanor.

1 b. As a result of the conviction, on or about November 8, 2005, the court
2 sentenced Respondent to serve 180 days in the custody of the sheriff, suspended, and granted
3 three years summary probation. Respondent was ordered to complete two days of community
4 service, attend a First Conviction Program and a MADD Victim Impact Panel session, pay fees
5 and fines, and comply with DUI probation terms. On or about September 29, 2011, the court
6 granted Respondent's Petition for Dismissal under Penal Code section 1203.4. Respondent's
7 guilty plea was withdrawn, a plea of not guilty was entered, and the charges were dismissed.

8 c. The facts that led to the conviction are that on or about the evening of August
9 24, 2005, the Oceanside Police Department responded to a call of a traffic collision with injuries.
10 Upon arrival at the scene, the reporting officer observed Respondent on a gurney being treated by
11 the Oceanside Fire Department. The officer could smell an odor of an alcoholic beverage coming
12 from Respondent, her eyes were bloodshot and extremely watery, and her speech was slurred.
13 Because Respondent was unable to perform field sobriety tests, she agreed to provide two breath
14 samples which were analyzed by the preliminary alcohol screening device with a BAC of .101
15 and .099 percent, respectively. Respondent's passenger, a 14-year-old female, was also injured.
16 Both were flown via helicopter to a local hospital. Respondent was later arrested at the hospital
17 and charged with felony DUI. Based on an investigation into the collision and witness
18 statements, it was determined that Respondent was traveling at a high rate of speed and attempted
19 to make a left turn. Respondent lost control of her vehicle and collided with a tree.

20 **SECOND CAUSE FOR DENIAL OF APPLICATION**

21 **(June 27, 2012 Criminal Conviction for DUI on April 12, 2012)**

22 13. Respondent's application for licensure is subject to denial under section 480,
23 subdivisions (a)(1) and (a)(3)(A) of the Code in that she was convicted of a crime that is
24 substantially related to the qualifications, duties, and functions of a registered pharmacy
25 technician, and would be a ground for discipline under section 4301, subdivision (l) of the Code
26 for a registered pharmacy technician. The circumstances are as follows:

27 a. On or about June 27, 2012, in a criminal proceeding entitled *People of the State*
28 *of California vs. Lindsey Nicole Moore*, in San Diego County Superior Court, case number

1 CN305606, Respondent was convicted on her plea of guilty to violating Vehicle Code section
2 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor. The court found
3 true the special allegations that Respondent was previously convicted of the same offense within
4 10 years, within the meaning of Vehicle Code sections 23626 and 23540; and that Respondent's
5 BAC was .15 percent or more, within the meaning of Vehicle Code section 23578. Pursuant to a
6 plea agreement, the court dismissed an additional count of violating Vehicle Code section 23152,
7 subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent or more.

8 b. As a result of the conviction, on or about July 18, 2012, the court sentenced
9 Respondent to serve 96 hours in the custody of the sheriff, with credit for one day, to be served on
10 consecutive weekends. Respondent was granted five years summary probation, and ordered to
11 complete 10 days of community service, attend a Multiple Conviction Program and a MADD
12 Victim Impact Panel session, pay fees and fines, and comply with DUI probation terms.

13 c. The facts that led to the conviction are that on or about the early morning of
14 April 12, 2012, the Oceanside Police Department responded to a report of a reckless driver. The
15 responding police officer came upon two vehicles parked at a curb near an intersection.
16 Respondent's vehicle had rear-ended the vehicle in front of her. Upon contact with Respondent,
17 the officer noted that Respondent displayed the objective symptoms of alcohol intoxication:
18 slurred speech, bloodshot and watery eyes, unsteady gait, and a strong odor of an alcoholic
19 beverage coming from her breath and person. Respondent submitted to a series of field sobriety
20 tests which she was unable to perform as explained and demonstrated by the officer. Respondent
21 refused to provide a breath sample for preliminary screening. Respondent was arrested for
22 driving under the influence. During booking, a blood sample was drawn which analyzed with a
23 BAC of .21 percent.

24 **THIRD CAUSE FOR DENIAL OF APPLICATION**

25 **(Alcohol-Related Criminal Convictions)**

26 14. Respondent's application for licensure is subject to denial under section 480,
27 subdivision (a)(3)(A) of the Code in that she was convicted of two misdemeanor offenses
28 involving the consumption of alcoholic beverages, as described in paragraphs 12 and 13, above.

1 Said convictions would be a ground for discipline under section 4301, subdivision (k) of the Code
2 for a registered pharmacy technician.

3 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

4 **(Dangerous Use of Alcohol)**

5 15. Respondent's application for licensure is subject to denial under section 480,
6 subdivision (a)(3)(A) of the Code in that on or about November 8, 2005, and April 12, 2012, as
7 described in paragraphs 12 and 13, above, she used alcohol in a manner that was dangerous and
8 injurious to herself and to others, which would be a ground for discipline under section 4301,
9 subdivision (h) of the Code for a registered pharmacy technician.

10 **DISCIPLINARY CONSIDERATIONS**

11 16. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
12 to California Code of Regulations, title 16, section 1769, Complainant alleges the following:

13 a. On or about May 30, 2003, in a criminal proceeding entitled *People of the State*
14 *of California vs. Lindsey Nicole Moore*, in San Diego County Superior Court, case number
15 CN160643, Respondent was convicted on her plea of guilty to violating Penal Code section 602,
16 subdivision (j), trespass with intent to interfere, a misdemeanor.

17 b. As a result of the conviction, on or about May 30, 2003, the court granted
18 Respondent three years summary probation, and she was ordered to pay fines and fees, and to
19 stay away from Pacifica Elementary School. On or about September 29, 2011, the court granted
20 Respondent's Petition for Dismissal under Penal Code section 1203.4. Respondent's guilty plea
21 was withdrawn, a plea of not guilty was entered, and the charges were dismissed.

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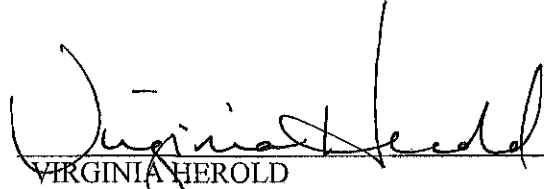
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PRAYER

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

1. Denying the application of Lindsey Nicole Moore 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

SD2013805334