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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
12 Against:

Case No. 4845

13 **EDGAR ACEVEDO**

STATEMENT OF ISSUES

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about December 13, 2012, the Board of Pharmacy ("Board") received an
21 application for Pharmacy Technician Registration from Edgar Acevedo ("Respondent"). On or
22 about December 5, 2012, Respondent certified under penalty of perjury to the truthfulness of all
23 statements, answers, and representations in the application. The Board denied the application on
24 April 26, 2013.

25 **JURISDICTION**

26 3. This Statement of Issues is brought before the under the authority of the following
27 laws. All section references are to the Business and Professions Code ("Code") unless otherwise
28 indicated.

STATUTORY PROVISIONS

4. Code 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."

5. Code 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.

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

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

11 6. Code section 4300 provides in pertinent part that every license issued by the Board is
12 subject to discipline, including suspension or revocation.

13 7. Code section 4301 states, in pertinent part:

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

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

21

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

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1 FIRST CAUSE FOR DENIAL OF APPLICATION

2 (Convictions of Substantially Related Crimes)

3 9. Respondent's application is subject to denial under Code section 480, subdivision
4 (a)(1), in that Respondent was convicted of a crime substantially related to the qualifications,
5 functions or duties of a pharmacy technician, as follows:

6 a. On or about March 26, 2008, after pleading nolo contendere, Respondent was
7 convicted of one felony count of violating Penal Code section 245, subdivision (a)(1) [assault
8 with a deadly weapon] and one felony count of Penal Code section 594.7 [vandalism with priors]
9 in the criminal proceeding entitled *People v. Edgar Salazar Acevedo* (Super. Ct. Los Angeles
10 County, 2006, No. KA081796). The Court sentenced Respondent to serve 365 days in Los
11 Angeles County Jail and placed him on 3 years formal probation, with terms and conditions.

12 b. The circumstances surrounding the conviction are that on or about January 16, 2008,
13 Respondent was involved in a gang related fight with J.B. While J.B. was lying on the ground,
14 Respondent kicked both side mirrors of his vehicle until he knocked them off, and then punched
15 the victim in the face with a closed fist.

16 c. On or about June 19, 2007, after pleading nolo contendere, Respondent was convicted
17 of one misdemeanor count of violating Penal Code section 245, subdivision (a)(1) [assault with a
18 deadly weapon] in the criminal proceeding entitled *People v. Edgar Salazar Acevedo* (Super. Ct.
19 Los Angeles County, 2007, No. 7RI03177). The Court sentenced Respondent to serve 90 days in
20 Los Angeles County Jail.

21 d. The circumstances surrounding the conviction are that on or about May 29, 2007,
22 Respondent was involved in a fight in which the victim was hit with a brick.

23 e. On or about January 24, 2007, after pleading nolo contendere, Respondent was
24 convicted of one felony count of violating Penal Code section 594, subdivision (a) [vandalism] in
25 the criminal proceeding entitled *People v. Edgar Salazar Acevedo* (Super. Ct. Los Angeles
26 County, 2007, No. KA077493). The Court sentenced Respondent to serve 180 days in Los
27 Angeles County Jail and placed him on 3 years probation, with terms and conditions.

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1 f. The circumstances surrounding the conviction are that on or about December 24,
2 2006, Respondent was arrested for vandalizing the veterans' memorial sign at Santa Anita and
3 Valley Blvd. in El Monte, CA.

4 g. On or about June 27, 2006, after pleading nolo contendere, Respondent was convicted
5 of one misdemeanor count of violating Penal Code section 594, subdivision (a) [vandalism] in the
6 criminal proceeding entitled *People v. Edgar Acevedo* (Super. Ct. Los Angeles County, 2006, No.
7 6RI02801). The Court sentenced Respondent to serve 45 days in Los Angeles County Jail and
8 placed him on 3 years probation, with terms and conditions

9 h. The circumstances surrounding the conviction are that on or about March 13, 2006,
10 Respondent was arrested for writing graffiti on a stop sign.

11 i. On or about June 27, 2006, after pleading nolo contendere, Respondent was convicted
12 of one misdemeanor count of violating Penal Code section 594, subdivision (a) [vandalism] in the
13 criminal proceeding entitled *People v. Edgar Acevedo* (Super. Ct. Los Angeles County, 2006, No.
14 6RI03833). The Court sentenced Respondent to serve 45 days in Los Angeles County Jail and
15 placed him on 3 years probation, with terms and conditions

16 j. The circumstances surrounding the conviction are that on or about June 24, 2006,
17 Respondent was observed by two officers with the El Monte Police Department marking a school
18 sign with a marker.

19 k. On or about April 26, 2006, after pleading nolo contendere, Respondent was
20 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
21 [driving while having 0.08% or more, by weight, of alcohol in his blood] in the criminal
22 proceeding entitled *People v. Edgar Salazar Acevedo* (Super. Ct. Los Angeles County, 2006, No.
23 6RI02044). The Court placed Respondent on 3 years probation, with terms and conditions.

24 l. The circumstances surrounding the conviction are that on or about February 20, 2006,
25 during a traffic stop by the El Monte Police Department, Respondent was contacted. While
26 speaking to Respondent the officer detected an odor of alcohol emitting from his breath. When
27 asked to step out of the car, Respondent had to lean on the door of the vehicle to regain his
28 balance. During a search of his person, the officer found a full 12 ounce beer bottle in the front

1 portion of Respondent's pants. Respondent submitted to a breath test that resulted in a breath-
2 alcohol content level of 0.11% on the first and second reading.

3 **SECOND CAUSE FOR DENIAL OF APPLICATION**

4 **(Acts Warranting Suspension or Revocation of Licensure)**

5 10. Respondent's application is subject to denial under Code sections 4301, subdivision
6 (p) and 480, subdivision (a)(3), in that Respondent committed acts which if done by a licentiate of
7 the business and profession in question, constitutes grounds for discipline of a license, as follows:

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

15 b. Respondent committed acts involving moral turpitude, dishonesty, fraud, or deceit, in
16 violation of Code section 4301, subdivision (f). Complainant refers to, and by this reference
17 incorporates, the allegations set forth above in paragraph 9, subparagraphs (b), (f), (h), and (j),
18 inclusive, as though set forth fully.

19 c. Respondent used alcoholic beverages to an extent or in a manner dangerous or
20 injurious to himself, another person, or the public, in violation of Code section 4301, subdivision
21 (h). Complainant refers to, and by this reference incorporates, the allegations set forth above in
22 paragraph 9, subparagraph (l), as though set forth fully.

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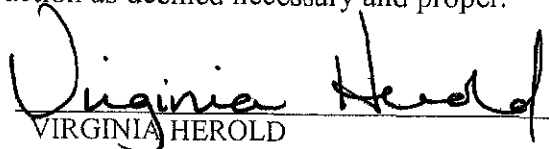
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PRAYER

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

1. Denying the application of Edgar Acevedo for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 10/21/13



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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