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

10 In the Matter of the Statement of Issues Against:

Case No. 5003

11 **JOHN MICHAEL CACAS**

12 **Applicant for Pharmacy Technician License**

STATEMENT OF ISSUES

13
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 April 8, 2013, the Board of Pharmacy, Department of Consumer Affairs
21 received an Application for Registration as a Pharmacy Technician from John Michael Cacas
22 (Respondent). On or about April 4, 2013, Respondent certified under penalty of perjury as to the
23 truthfulness of all statements, answers, and representations in the application. The Board denied
24 the application on or about August 23, 2013.

25 JURISDICTION

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

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STATUTORY AND REGULATORY PROVISIONS

4. Section 4300, subdivision (c), of the Code states in pertinent part:

“(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”

5. 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.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(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.

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

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.

6. Section 480 of the Code 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 “(1) Been convicted of a crime. . . . Any action which a board is permitted to take following
2 the establishment of a conviction may be taken . . . irrespective of a subsequent order under the
3 provisions of Section 1203.4 of the Penal Code.

4 “(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially
5 benefit himself or another, or substantially injure another; or

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

8 “The board may deny a license pursuant to this subdivision only if the crime or act is
9 substantially related to the qualifications, functions or duties of the . . . [license].”

10 . . .

11 “(c) A board may deny a license regulated by this code on the ground that the applicant
12 knowingly made a false statement of fact required to be revealed in the application”

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

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

20 FACTUAL/PROCEDURAL BACKGROUND

21 8. On or about April 4, 2013, Respondent signed his Application for Registration as a
22 Pharmacy Technician and included affidavit, certifying under penalty of perjury the truth and
23 accuracy of all statements, answers, and representations therein. That Application includes seven
24 yes/no questions on pages 2 and 3 which are preceded by the instruction: **You must provide a**
25 **written explanation for all affirmative answers indicated below. Failure to do so may result**
26 **in this application being deemed incomplete and being withdrawn.**

27 Question 7 of this series of questions in the Application then asks:

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1 Have you ever been convicted of any crime in any state, the USA and its territories, military
2 court or foreign country? Check the box next to "Yes" if you have ever been convicted or plead
3 guilty to any crime. "Conviction" includes a plea of no contest and any conviction that has been
4 set aside or deferred pursuant to Sections 1000 or 1203.4 of the Penal Code, including infractions,
5 misdemeanors, and felonies. You do not need to report a conviction for an infraction with a fine
6 of less than \$300 unless the infraction involved alcohol or controlled substances. You must,
7 however, disclose any convictions in which you entered a plea or no contest and any convictions
8 that were subsequently set aside or deferred pursuant to sections 1000 or 1203.4 of the Penal
9 Code. Check the box next to "NO" if you have not been convicted of a crime. You may wish to
10 provide the following information in order to assist the processing of your application:

11 descriptive explanation of the circumstances surrounding the conviction (i.e. dates and location of
12 incident and all circumstances surrounding the incident.) If documents were purged by the
13 arresting agency and/or court, a letter of explanation from these agencies is required. **Failure to**
14 **disclose a disciplinary action or conviction may result in the license being denied or revoked**
15 **for falsifying the application. Attach additional sheets if necessary.**

16 9. Respondent checked the box for "No" in response to Question 7. He did not attach
17 any statement of explanation of this response to his application materials.

18 10. A subsequent criminal records check for Respondent revealed several arrests and
19 convictions between 1996 and 2007. A letter was sent to Respondent by Board staff inquiring
20 about these apparent arrests and convictions, seeking Respondent's explanation of same, and also
21 an explanation of his failure to disclose this criminal history with the original application.

22 11. In response, on or about July 15, 2013, Respondent sent a letter back to the Board in
23 which he confirmed the following prior criminal convictions:

24 a. On or about November 5, 1996, in Alameda County Superior Court Case No. 317519,
25 Respondent was convicted of violating Health and Safety Code section 11377, subdivision (a)
26 (Possession of Controlled Substance), a misdemeanor. Respondent explained this conviction as
27 resulting from his "doing dope" with a friend, and having "picked up a little dope" for another
28 friend, at which time he was arrested while in possession of crystal **methamphetamine**.

1 b. On or about October 8, 1999, in Alameda County Superior Court Case No. 337978,
2 Respondent was convicted of violating Penal Code section 273.6, subdivision (a) (Violation of
3 Court Protective Order), a misdemeanor. Respondent explained this conviction as resulting from
4 an altercation or series of altercations between Respondent and his aunt's "sugar daddy," which
5 culminated in Respondent violating a court-issued protective order.

6 c. On or about August 16, 2000, in Alameda County Superior Court Case No. 343330,
7 Respondent was convicted of violating Penal Code section 242 (Battery), a misdemeanor. This
8 conviction Respondent explained as resulting from a fight with his mother's boyfriend.

9 d. On or about October 21, 2002, in Alameda County Superior Court Case No. 358675,
10 Respondent was convicted of violating Vehicle Code section 23103 (Reckless Driving), a
11 misdemeanor. Respondent explained this conviction as resulting from his having "had one drink"
12 while visiting his boss, then stopping at a gas station while on the way home, after which he
13 "burned out" while leaving the gas station and "lost control" of his vehicle.

14 e. On or about September 2, 2005, in Alameda County Superior Court Case No.
15 NM349432A, Respondent was convicted of violating Vehicle Code section 14601.5, subdivision
16 (a) (Driving While License Suspended or Revoked), a misdemeanor. Respondent explained this
17 conviction as relating to an occasion on which he and another person were smoking **marijuana** at
18 a job site, after which Respondent "got stuck at an intersection with a red light," got pulled over
19 by police, "was loaded," and was driving with a suspended license.

20 f. On or about February 6, 2006, in Alameda County Superior Court Case No. 388527,
21 Respondent was convicted of violating Vehicle Code section 14601.1, subdivision (a) (Driving
22 While License Suspended or Revoked), a misdemeanor. Respondent explained his conviction as
23 resulting from an illegal U-turn he performed with a "car full of my kids."

24 g. On or about February 16, 2007, in Alameda County Superior Court Case No. 399961,
25 Respondent was convicted of violating Penal Code section 647, subdivision (f) (Disorderly
26 Conduct, Under Influence of Alcohol/Drug), a misdemeanor. Respondent explained this
27 conviction as resulting from his consuming two pitchers of beer and being stopped by police
28 while walking. The police report states that Respondent was in possession of **methamphetamine**.

1 12. As explanation for his failure to disclose, Respondent stated in his letter his belief that
2 the convictions in Case Nos. 317519, 337978, 343330, 358675, and 399961 “were expunged in
3 court,” and were therefore “erased from” his record. He further stated his belief that Case Nos.
4 NM349432A and 388527 were “taken care of” at the time with time served and/or a plea.

5 13. Board staff were able to confirm that the conviction in Case No. 399961 had been the
6 subject of an Order for Dismissal under Penal Code section 1203.4, issued on or about September
7 28, 2012, which Order contained the following standard language: “The defendant is required to
8 disclose the above conviction in response to any direct question contained in any questionnaire or
9 application for public office or for licensure by any state or local agency . . .”

10 FIRST CAUSE FOR DENIAL OF APPLICATION

11 (Conviction of Substantially Related Crime(s))

12 14. Respondent's application is subject to denial under the following section(s) of the
13 Code: 480(a)(1); 480(a)(3) by reference to 4301(l); and/or 4300(c) by reference to 4301(l) and
14 California Code of Regulations, title 16, section 1770, for conviction of a substantially related
15 crime or crimes, in that between in or about 1996 and in or about 2007, as described above in
16 paragraph 11, Respondent suffered up to seven (7) substantially related convictions.

17 SECOND CAUSE FOR DENIAL OF APPLICATION

18 (Conviction of Alcohol or Drug-Involved Crimes)

19 15. Respondent's application is subject to denial under the following section(s) of the
20 Code: 480(a)(3) by reference to 4301(k); and/or 4300(c) by reference to 4301(k), in that, as
21 described in paragraph 11 above, Respondent was convicted of more than one misdemeanor
22 involving the use or consumption of an alcoholic beverage or a dangerous drug.

23 THIRD CAUSE FOR DENIAL OF APPLICATION

24 (Self-Administration of Controlled Substance; Dangerous or Injurious Use of Alcohol/Drug)

25 16. Respondent's application is subject to denial under the following section(s) of the
26 Code: 480(a)(3) by reference to 4301(h); and/or 4300(c) by reference to 4301(h), in that, as
27 described in paragraph 11 above, Respondent self-administered a controlled substance and/or
28 made dangerous or injurious use of alcohol and/or a dangerous drug.

1 FOURTH CAUSE FOR DENIAL OF APPLICATION

2 (Dishonesty in Application Material(s))

3 17. Respondent's application is subject to denial under the following section(s) of the
4 Code: 480(c); 480(a)(2); 480(a)(3) by reference to 4301(f) and/or (g); and/or 4300(c) by
5 reference to 4301(f) and/or (g) in that, as described in paragraphs 8-13 above, Respondent was
6 dishonest and/or falsely represented and/or made false statement(s) of fact regarding the nature,
7 status, and/or significance of the elements of his criminal history, in his application materials.

8 FIFTH CAUSE FOR DENIAL OF APPLICATION

9 (Unprofessional Conduct)

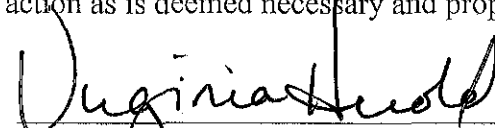
10 18. Respondent's application is subject to denial under the following section(s) of the
11 Code: 480(a)(3) by reference to 4301; and/or 4300(c) by reference to 4301, in that, as described
12 in paragraphs 8 through 17 above, Respondent engaged in unprofessional conduct.

13 PRAYER

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

- 16 1. Denying the application of John Michael Cacas for a pharmacy technician license;
17 2. Taking such other and further action as is deemed necessary and proper.

18 DATED: 5/3/14



19 VIRGINIA HEROLD
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant

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