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

11 In the Matter of the Statement of Issues
Against:

Case No. 5336

12 **KURT EUGENE COSTA**

STATEMENT OF ISSUES

13 Respondent.
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16 Virginia Herold ("Complainant") alleges:

17 **PARTIES**

- 18 1. Complainant brings this Statement of Issues solely in her official capacity as the
19 Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.
20 2. On or about January 24, 2014, the Board received an Application for a Designated
21 Representative License from Kurt Eugene Costa ("Respondent"). On or about January 5, 2014,
22 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and
23 representations in the application. The Board denied the application on September 3, 2014.

24 **JURISDICTION**

- 25 3. Pursuant to Business and Professions Code ("Code") section 485(b), on or about
26 September 3, 2014, Respondent's application was denied and he was notified of the right to a
27 hearing to appeal the denial.

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1 4. On or about October 9, 2014, the Board received Respondent's request for a hearing
2 to appeal the denial of his application.

3 **STATUTORY PROVISIONS**

4 5. Business and Professions Code ("Code") section 4300 states, in pertinent part:

5 (c) The board may refuse a license to any applicant guilty of unprofessional
6 conduct.

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

8 The board shall take action against any holder of a license who is guilty of
9 unprofessional conduct or whose license has been procured by fraud or
10 misrepresentation or issued by mistake.

11 Unprofessional conduct shall include, but is not limited to, any of the
12 following:

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

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

21 (l) The conviction of a crime substantially related to the qualifications,
22 functions, and duties of a licensee under this chapter. The record of conviction of a
23 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
24 States Code regulating controlled substances or of a violation of the statutes of this
25 state regulating controlled substances or dangerous drugs shall be conclusive
26 evidence of unprofessional conduct. In all other cases, the record of conviction shall
27 be conclusive evidence only of the fact that the conviction occurred. The board may
28 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.

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1 7. Code section 480¹ states, in pertinent part:

2 (a) A board may deny a license regulated by this code on the grounds that the
3 applicant has one of the following:

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

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

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

16 **FIRST CAUSE FOR DENIAL OF APPLICATION**

17 **(Conviction of Crimes)**

18 8. Respondent's application is subject to denial under Code section 480(a)(1), in that he
19 was convicted of the following crimes that are substantially related to the qualifications, functions
20 or duties of a designated representative:

21 a. On or about December 30, 1998, in the case of *People v. Kurt Eugene Costa*, (Super.
22 Ct. Sacramento County, 1998, Case No. 98T03850), Respondent was convicted by the Court on
23 his plea of nolo contendere of violating Vehicle Code section 23152(a) (driving while under the
24 influence of drug or alcohol or their combined influence), a misdemeanor. The circumstances of
25 the crime were that on or about August 2, 1998, Respondent drove a vehicle while having a blood
26 alcohol level of 0.16%/0.17%.

27 b. On or about July 19, 2005, in the case of *People v. Kurt Eugene Costa*, (Super. Ct.
28 Sacramento County, 2005, Case No. 05T02347), Respondent was convicted by the Court on his

¹ This Statement of Issues is based on Code section 480 as it was in effect at the time of the denial. Section 480 was amended effective January 1, 2015, with the addition of the following language: "(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal."

1 plea of nolo contendere of violating Vehicle Code section 23152(a) (driving while under the
2 influence of drug or alcohol or their combined influence), a misdemeanor, with a prior conviction
3 of the same, as set forth above in subdivision (a), with an enhancement of Vehicle Code section
4 23578 (having a blood alcohol level of 0.15% or higher). The circumstances of the crime were
5 that on or about May 6, 2005, Respondent drove a vehicle while having a blood alcohol level of
6 0.32%.

7 c. On or about January 8, 2007, in the case of *People v. Kurt Eugene Costa*, (Super. Ct.
8 Sacramento County, 2007, Case No. 07T00099), Respondent was convicted by the Court on his
9 plea of nolo contendere of violating Vehicle Code section 23152(b) (driving with a blood alcohol
10 level of .08% or higher), a misdemeanor, with two prior convictions of the same, as set forth
11 above in subdivisions (a) and (b), with an enhancement of Vehicle Code section 23578 (having a
12 blood alcohol level of 0.15% or higher), and Vehicle Code section 12500(a) (driving a vehicle
13 without a valid driver's license). The circumstances of the crime were that on or about January 1,
14 2007, Respondent drove a vehicle while having a blood alcohol level of 0.27% and was driving
15 into oncoming traffic.

16 **SECOND CAUSE FOR DENIAL OF APPLICATION**

17 **(Committed Acts Which If Done By A Licentiate)**

18 9. Respondent's application is subject to denial under Code section 480(a)(3)(A), in that
19 he committed acts which if done by a licentiate of the profession would constitute grounds for
20 discipline under Code section 4301(l) (conviction of a crime). The conduct described above in
21 paragraph 8, would also constitute grounds for discipline under Code sections 4301(h) (used
22 alcohol to an extent or in a manner dangerous or injurious to herself and the public); and 4301(k)
23 (conviction of more than one misdemeanor involving the consumption of alcohol).

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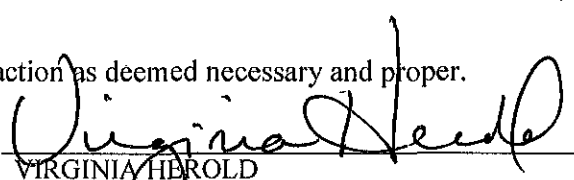
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PRAYER

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 Kurt Eugene Costa for a Designated Representative License; and,
2. Taking such other and further action as deemed necessary and proper.

DATED: 3/27/15


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

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