

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 THOMAS L. RINALDI
Supervising Deputy Attorney General
4 State Bar No. 206911
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2541
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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. 5416

12 **MARTIN ARNULF MEDINA**

STATEMENT OF ISSUES

13 Pharmacy Technician Registration Applicant

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 (Board).

21 2. On or about February 28, 2014, the Board received an application for a Pharmacy
22 Technician Registration from Martin Arnulf Medina aka Martin Arnolo Medina aka Martin
23 Arnold Medina (Respondent). On or about January 30, 2014, Respondent certified under penalty
24 of perjury to the truthfulness of all statements, answers, and representations in the application.
25 The Board denied the application on December 19, 2014.

26 ///

27 ///

28 ///

1 **JURISDICTION**

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

5 **STATUTORY PROVISIONS**

6 4. Section 480 of the Code states, in pertinent part:

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

9 “(1) Been convicted of a crime. A conviction within the meaning of this section means a
10 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
11 board is permitted to take following the establishment of a conviction may be taken when the
12 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
13 an order granting probation is made suspending the imposition of sentence, irrespective of a
14 subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

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

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

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

22 “(b) Notwithstanding any other provision of this code, a person shall not be denied a
23 license solely on the basis that he or she has been convicted of a felony if he or she has obtained a
24 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
25 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
26 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
27 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
28 Section 482.

1 "(c) Notwithstanding any other provisions of this code, a person shall not be denied a
2 license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4,
3 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been
4 dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof
5 of the dismissal.

6 "(d) A board may deny a license regulated by this code on the ground that the applicant
7 knowingly made a false statement of fact required to be revealed in the application for the
8 license."

9 5. Section 490 of the Code provides that a board may suspend or revoke a license on the
10 ground that the licensee has been convicted of a crime substantially related to the qualifications,
11 functions, or duties of the business or profession for which the license was issued.

12 6. Section 4300 of the Code states, in pertinent part:

13

14 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct.
15 The board may, in its sole discretion, issue a probationary license to any applicant for a license
16 who is guilty of unprofessional conduct and who has met all other requirements for licensure.
17 The board may issue the license subject to any terms or conditions not contrary to public policy.
18 .."

19 7. Section 4301 of the Code states, in pertinent part:

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

23

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

27

28 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous

1 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
2 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
3 to the extent that the use impairs the ability of the person to conduct with safety to the public the
4 practice authorized by the license.

5

6 "(l) The conviction of a crime substantially related to the qualifications, functions, and
7 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
8 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
9 substances or of a violation of the statutes of this state regulating controlled substances or
10 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
11 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
12 The board may inquire into the circumstances surrounding the commission of the crime, in order
13 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
14 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
15 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
16 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
17 of this provision. The board may take action when the time for appeal has elapsed, or the
18 judgment of conviction has been affirmed on appeal or when an order granting probation is made
19 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
20 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
21 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
22 indictment.

23

24 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
25 violation of or conspiring to violate any provision or term of this chapter or of the applicable
26 federal and state laws and regulations governing pharmacy, including regulations established by
27 the board or by any other state or federal regulatory agency.

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

1 **REGULATORY PROVISION**

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

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

9 **FIRST CAUSE FOR DENIAL OF APPLICATION**

10 **(Conviction of a Substantially Related Crime)**

11 9. Respondent's application is subject to denial under section 480, subdivision (a)(1), in
12 that Respondent was convicted of a substantially related crime, as follows:

13 a. On or about January 6, 2014, after pleading nolo contendere, Respondent was
14 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (d)
15 [driving while having 0.08% or more, by weight, blood alcohol content (BAC), in the criminal
16 proceeding entitled *The People of the State of California v. Martin Arnold Medina* (Super. Ct.
17 L.A. County, 2014, No. 3JB08706). Respondent admitted the special allegation pursuant to
18 Vehicle Code section 23578 [excessive BAC of 0.15% or more, by weight]. The Court placed
19 Respondent on 36 months probation, ordered him to complete a six-month First-Offender
20 Alcohol and Other Drug Education and Counseling Program, ordered him to attend a Victim
21 Impact Program of Mothers Against Drunk Driving, ordered him to complete 16 alcohol and
22 narcotics anonymous meetings, and ordered him to pay a fine or complete 12 days of tree farm
23 service.

24 b. The circumstances surrounding the conviction are that on or about October 27, 2013,
25 a Covina Police Department officer made a traffic stop on Respondent. The officer contacted
26 Respondent who displayed symptoms consistent with alcohol intoxication. Respondent took, but
27 could not complete field sobriety tests. A subsequent breath test revealed a BAC of 0.22% and
28 0.23%.

1 **SECOND CAUSE FOR DENIAL OF APPLICATION**

2 **(Knowingly Made a False Statement of Fact)**

3 10. Respondent's application is subject to denial under section 480, subdivision (c), in
4 that on or about January 30, 2014, Respondent knowingly made a false statement of fact by
5 failing to disclose his January 6, 2014 conviction on his application for licensure to the Board as
6 required. Complainant refers to, and by this reference incorporates, the allegations set forth in
7 paragraph 9, as though set forth fully.

8 **THIRD CAUSE FOR DENIAL OF APPLICATION**

9 **(Acts Warranting Denial of Licensure)**

10 11. Respondent's application is subject to denial under sections 4301, subdivision (o) and
11 / or (p), and 480, subdivisions (a)(3), on the grounds of unprofessional conduct, in that
12 Respondent committed acts which if done by a licentiate of the business and profession in
13 question, would be grounds for suspension or revocation of his license, as follows:

14 a. On or about January 6, 2014, Respondent was convicted of a crime substantially
15 related to the qualifications, functions, or duties of a pharmacy technician which to a substantial
16 degree evidence his present or potential unfitness to perform the functions authorized by his
17 license in a manner consistent with the public health, safety, or welfare, in violation of sections
18 490 and 4301, subdivision (l), and in conjunction with California Code of Regulations, title 16,
19 section 1770. Complainant refers to, and by this reference incorporates, the allegations set forth
20 above in paragraph 9, as though set forth fully.

21 b. On or about January 30, 2014, Respondent committed acts involving moral turpitude,
22 dishonesty, fraud, deceit or corruption by knowingly making a false statement of fact by failing to
23 disclose his January 6, 2014 conviction on his application, in violation of section 4301,
24 subdivision (f). Complainant refers to, and by this reference incorporates, the allegations set forth
25 above in paragraphs 10, as though set forth fully.

26 c. On or about April 16, 2011, Respondent used alcoholic beverages to an extent or in a
27 manner dangerous or injurious to herself, any person, or the public, in violation of section 4301,
28 subdivision (h). Complainant refers to, and by this reference incorporates, the allegations set

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

forth above in paragraph 9, subparagraph b, inclusive, as though set forth fully.

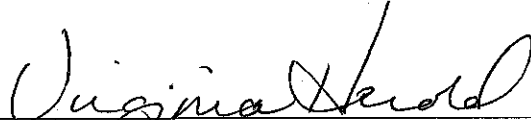
PRAYER

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

DATED: _____

7/21/15



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

LA2015500404
51782530_2.doc