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

11 In the Matter of the Statement of Issues
12 Against:

Case No. 5421

13 **ABEL WOLDEGABRIEL**

STATEMENT OF ISSUES

14 **Pharmacy Technician Applicant**

15 Respondent.

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17 Complainant alleges:

18 PARTIES

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

21 2. On or about June 23, 2014, the Board of Pharmacy, Department of Consumer Affairs
22 received an application for a Pharmacy Technician Registration from Abel Woldegabriel
23 (Respondent). On or about June 19, 2014, Abel Woldegabriel certified under penalty of perjury
24 to the truthfulness of all statements, answers, and representations in the application. The Board
25 denied the application on February 13, 2015.

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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 unless otherwise indicated.

5 4. Section 480 of the Code states:

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

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

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

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

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

(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.

. . . .

5. Section 4301 of the Code states:

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

. . . .

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

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

11 (l) The conviction of a crime substantially related to the qualifications,
12 functions, and duties of a licensee under this chapter. The record of conviction of a
13 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
14 States Code regulating controlled substances or of a violation of the statutes of this
15 state regulating controlled substances or dangerous drugs shall be conclusive
16 evidence of unprofessional conduct. In all other cases, the record of conviction
17 shall be conclusive evidence only of the fact that the conviction occurred. The
18 board may inquire into the circumstances surrounding the commission of the crime,
19 in order to fix the degree of discipline or, in the case of a conviction not involving
20 controlled substances or dangerous drugs, to determine if the conviction is of an
21 offense substantially related to the qualifications, functions, and duties of a licensee
22 under this chapter. A plea or verdict of guilty or a conviction following a plea of
23 nolo contendere is deemed to be a conviction within the meaning of this provision.
24 The board may take action when the time for appeal has elapsed, or the judgment of
25 conviction has been affirmed on appeal or when an order granting probation is
26 made suspending the imposition of sentence, irrespective of a subsequent order
27 under Section 1203.4 of the Penal Code allowing the person to withdraw his or her
28 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.

. . . .

6. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
administrative law judge to direct a licentiate found to have committed a violation or violations of
the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
enforcement of the case, with failure of the licentiate to comply subjecting the license to not
being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
may be included in a stipulated settlement.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Conviction of Crimes)

7. Respondent's application is subject to denial under Code sections 480, subdivision
(a)(1), and 4301, subdivisions (k) and (l), in that Respondent was convicted of two alcohol-

1 related misdemeanors substantially related to the qualifications, functions, and duties of a
2 pharmacy technician. The circumstances are as follows:

3 a. On or about August 23, 2010, in a criminal proceeding entitled *People v. Abel*
4 *Woldegabriel* in Alameda County Superior Court, Case Number 427730, Respondent was
5 convicted by plea of nolo contendere in Vehicle Code 23152, subdivision (b) [driving with a
6 blood alcohol content in excess of 0.08%], a misdemeanor. Respondent was sentenced to 36
7 months probation, complete a 6 month alcohol program, and serve 5 days in jail. The
8 circumstances of his arrest were that on or about June 4, 2010, Respondent was involved in a
9 vehicle collision. Officers from the San Leandro Police Department arrived and observed
10 Respondent to be under the influence of alcohol. Respondent's blood alcohol content at the time
11 of his arrest was 0.19%.

12 b. On or about April 18, 2012, in a criminal proceeding entitled *People v. Abel*
13 *Woldegabriel* in Alameda County Superior Court, Case Number 577758, Respondent was
14 convicted by plea of nolo contendere in Vehicle Code 23152, subdivision (b) [driving with a
15 blood alcohol content in excess of 0.08%], a misdemeanor. Respondent was sentenced to 36
16 months probation, complete an 18 month alcohol program, and serve 20 days in jail. The
17 circumstances of his arrest were that on or about March 3, 2012, Respondent was driving a motor
18 vehicle in Oakland, CA. Officers from the California Highway Patrol observed Respondent to
19 weave in and out of lanes while driving. The officers initiated a traffic stop of Respondent. The
20 officers observed Respondent to be under the influence of alcohol. Respondent's blood alcohol
21 content at the time of his arrest was 0.21%.

22 SECOND CAUSE FOR DENIAL OF APPLICATION

23 (Dangerous Use of Alcohol)

24 8. Respondent's application is subject to denial under Code sections 480, subdivision
25 (a)(3) and 4301, subdivision (h), in that the Respondent used alcohol in a manner that was
26 dangerous to the public. The circumstances are described above in paragraph 7.

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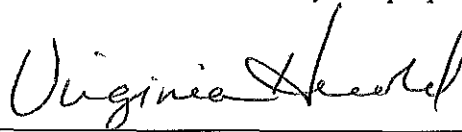
PRAYER

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 Abel Woldegabriel for a Pharmacy Technician License;
2. Taking such other and further action as deemed necessary and proper.

DATED: _____

4/8/16



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

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