

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

7 *Attorneys for Complainant*

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. 5427

13 **KIMBERLY MICHELLE MACIAS**
14 Pharmacy Technician Registration Applicant
15 Respondent.

STATEMENT OF ISSUES

16
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 (Board), Department of Consumer
21 Affairs.

22 2. On or about February 26, 2014, the Board received an application for a Pharmacy
23 Technician Registration from Kimberly Michelle Macias (Respondent). On or about February 20,
24 2014, Respondent certified under penalty of perjury to the truthfulness of all statements, answers,
25 and representations in the application. The Board denied the application on January 7, 2015.

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 unless otherwise
4 indicated.

5 4. Section 4300, subdivision (c), states, in pertinent part:

6 "The board may refuse a license to any applicant guilty of unprofessional conduct. The
7 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
8 guilty of unprofessional conduct and who has met all other requirements for licensure. . . ."

9 **STATUTORY AND REGULATORY PROVISIONS**

10 5. Section 480 states, in pertinent part:

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

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

19 "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
20 benefit himself or herself or another, or substantially injure another.

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

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

26 "(b) Notwithstanding any other provision of this code, a person shall not be denied a
27 license solely on the basis that he or she has been convicted of a felony if he or she has obtained a
28 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of

1 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
2 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
3 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
4 Section 482.

5 "(c) Notwithstanding any other provisions of this code, a person shall not be denied a
6 license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4,
7 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been
8 dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof
9 of the dismissal."

10 6. Section 4300 provides in pertinent part, that every license issued by the Boards is
11 subject to discipline, including suspension or revocation.

12 7. Section 4301 states, in pertinent part:

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

16

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

20

21 "(l) The conviction of a crime substantially related to the qualifications, functions, and
22 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
23 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
24 substances or of a violation of the statutes of this state regulating controlled substances or
25 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
26 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
27 The board may inquire into the circumstances surrounding the commission of the crime, in order to
28 fix the degree of discipline or, in the case of a conviction not involving controlled substances or

1 dangerous drugs, to determine if the conviction is of an offense substantially related to the
2 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
3 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
4 of this provision. The board may take action when the time for appeal has elapsed, or the
5 judgment of conviction has been affirmed on appeal or when an order granting probation is made
6 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
7 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
8 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
9 indictment.

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

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

17 **FIRST CAUSE FOR DENIAL OF APPLICATION**

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

19 9. Respondent's application is subject to denial under section 480, subdivision (a)(1), in
20 that Respondent has been convicted of a crime substantially related to the qualifications, functions
21 or duties of a pharmacy technician, as follows:

22 a. On or about August 9, 2011, after pleading nolo contendere, Respondent was
23 convicted of one misdemeanor count of violating Penal code section 459 [burglary] in the criminal
24 proceeding entitled *The People of the State of California v. Kimberly Ellis* (Super. Ct. L.A.
25 County, 2011, No. 1BF03821). The Court sentenced Respondent to serve 10 days in Los Angeles
26 County jail and placed her on 36 months probation, with terms and conditions. On or about
27 February 5, 2014, the Court dismissed the matter pursuant to Penal Code section 1203.4.

28 ///

1 b. The circumstances surrounding the conviction are that on or about August 5, 2011,
2 Respondent attempted to cash a business check in the amount of \$775.00 at a Money Mart. When
3 the cashier called to verify if the check was good, she was informed that the business had been
4 burglarized and their checkbook had been stolen. The teller notified police who detained
5 Respondent. Respondent admitted to deputies that she knew the check was bad but she needed
6 the money to pay her rent.

7 **SECOND CAUSE FOR DENIAL OF APPLICATION**

8 **(Acts Involving Dishonesty, Fraud, or Deceit)**

9 10. Respondent's application is subject to denial under section 480, subdivision (a)(2), in
10 that Respondent committed acts involving dishonesty, fraud, or deceit with the intent to
11 substantially benefit herself, or substantially injure another. Complainant refers to, and by this
12 reference incorporates, the allegations set forth above in paragraph 9, subparagraph (b), as though
13 set forth fully

14 **THIRD CAUSE FOR DENIAL OF APPLICATION**

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

16 11. Respondent's application is subject to denial under section 480, subdivisions (a)(3)A)
17 and (a)(3)(B), in that Respondent committed acts which if done by a registered pharmacy
18 technician would be grounds for suspension or revocation of the license as follows:

19 a. Respondent was convicted of a crime substantially related to the qualifications,
20 functions, or duties of a pharmacy technician which to a substantial degree evidence her present or
21 potential unfitness to perform the functions authorized by the license in a manner consistent with
22 the public health, safety, or welfare, in violation of sections 4031, subdivision (l), in conjunction
23 with California Code of Regulations, title 16, section 1770. Complainant refers to, and by this
24 reference incorporates, the allegations set forth above in paragraph 9, subparagraph (a), as though
25 set forth fully.

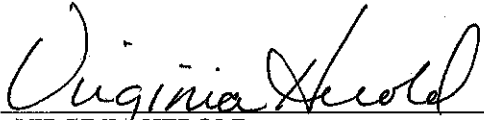
26 b. Respondent committed acts involving dishonesty, fraud, or deceit, in violation of
27 section 4301, subdivision (f). Complainant refers to, and by this reference incorporates, the
28 allegations set forth above in paragraph 9, subparagraph (b), as though set forth fully.

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

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

DATED: 9/12/15 

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

LA2015500716
51835489.doc
mc (8/26/15)