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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  
11 Against:

Case No. 5911

12 **TIFFANY NICOLE DiSTEFANO**  
13 **aka TIFFANY NICOLE BURKHARDT**

**STATEMENT OF ISSUES**

14 **Pharmacy Technician Applicant.**

15 Respondent.

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17 Virginia Herold ("Complainant") alleges:

18 **PARTIES**

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

21 2. On or about January 5, 2016, the Board received an application for a pharmacy  
22 technician license from Tiffany Nicole DiStefano, also known as Tiffany Nicole Burkhardt  
23 ("Respondent"). On or about January 6, 2016, Respondent certified under penalty of perjury to  
24 the truthfulness of all statements, answers, and representations in the application. The Board  
25 denied the application on May 6, 2016.

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1 **JURISDICTION**

2 3. Pursuant to Business and Professions Code (“Code”) section 485(b), on or about May  
3 6, 2016, Respondent’s application was denied and she was notified of the right to a hearing to  
4 appeal the denial.

5 4. On or about July 5, 2016, the Board received Respondent’s request for a hearing to  
6 appeal the denial of her application.

7 **STATUTORY PROVISIONS**

8 5. Business and Professions Code (“Code”) section 4300 states, in pertinent part:

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

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

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

14 (f) The commission of any act involving moral turpitude, dishonesty, fraud,  
15 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.

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

18 (h) The administering to oneself, of any controlled substance, or the use of any  
19 dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
20 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.

21 (j) The violation of any of the statutes of this state, of any other state, or of the  
United States regulating controlled substances and dangerous drugs.

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

1 board may take action when the time for appeal has elapsed, or the judgment of  
2 conviction has been affirmed on appeal or when an order granting probation is made  
3 suspending the imposition of sentence, irrespective of a subsequent order under  
4 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of  
5 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or  
6 dismissing the accusation, information, or indictment.

7 (n) The revocation, suspension, or other discipline by another state of a license  
8 to practice pharmacy, operate a pharmacy, or do any other act for which a license is  
9 required by this chapter.

10 7. Code section 480 states:

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

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

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

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

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

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

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

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**DRUGS**

8. "Marijuana" is a Schedule I controlled substance as designated by Health and Safety Code section 11054(d)(13).

**FIRST CAUSE FOR DENIAL OF APPLICATION**

**(Out of State Discipline)**

9. Respondent's application is subject to denial under Code section 4300(c), on the grounds of unprofessional conduct as defined in Code section 4301(n), in that effective July 15, 2013, pursuant to a Consent Order issued by the Oregon State Board of Pharmacy in a disciplinary proceeding titled, *In the Matter of the Technician License of Tiffany Nicole Burkhardt, Licensee, Case No. 2012-0501*, Respondent's Oregon Pharmacy Technician License Number T-0013981 was placed on probation for a period of three (3) years with terms and conditions. The Order was based on the following: On or about October 2, 2012, while employed at Walgreens Pharmacy, Respondent tested positive for Marijuana, a controlled substance. Said conduct is unprofessional conduct as defined by OAR<sup>1</sup> 855-006-0005(28)(b), (c), and (j), and is in violation of, and grounds for discipline pursuant to OAR 855-025-0050(l) and (12), ORS<sup>2</sup> 689.490(2)(a) and (c), and 689.405(l)(a) and (e)(B).

**SECOND CAUSE FOR DENIAL OF APPLICATION**

**(Conviction of a Crime)**

10. Respondent's application is subject to denial under Code section 480(a)(1), in that on or about March 20, 2000, in the case of *People v. Tiffany Nicole DiStefano* (Super. Ct. Santa Clara County, 2000, Case No. BB048102), Respondent was convicted by the Court on her plea of nolo contendere of violating Penal Code section 484/488 (theft/petty theft), a misdemeanor. The circumstances of the crime were that on or about March 5, 2000, Respondent unlawfully stole, took, and carried away personal property of Shoe Pavilion, to wit: shoes. The crime is substantially related to the qualifications, functions or duties of a pharmacy technician.

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<sup>1</sup> Oregon Administrative Rules  
<sup>2</sup> Oregon Revised Statutes

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**THIRD CAUSE FOR DENIAL OF APPLICATION**

**(False Statement on Application)**

11. Respondent’s application is subject to denial under Code section 480(d), in that on or about January 6, 2016, Respondent knowingly made a false statement of fact required to be revealed in the application for licensure, in that Respondent failed to disclose the conviction set forth above in paragraph 10.

**FOURTH CAUSE FOR DENIAL OF APPLICATION**

**(Dishonesty, Fraud or Deceit)**

12. Respondent’s application is subject to denial under Code section 480(a)(2), in that Respondent committed acts involving dishonesty, fraud or deceit with the intent to substantially benefit herself, as more particularly set forth above in paragraphs 10 and 11.

**FIFTH CAUSE FOR DENIAL OF APPLICATION**

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

13. Respondent’s application is subject to denial under Code section 480(a)(3)(A) and 4300(c), in that she committed acts which if done by a licentiate of the profession would constitute grounds for discipline for unprofessional conduct under the following Code sections:

- a. Code section 4301(l) (conviction of a crime), as set forth above in paragraph 10.
- b. Code section 4301(h) (use of a controlled substance, to wit: Marijuana), as set forth above in paragraph 9.
- c. Code section 4301(g) (knowingly making or signing a document that falsely represents the existence or nonexistence of a state of facts), as more particularly set forth above in paragraph 11.
- d. Code section 4301(f) (commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption), as more particularly set forth above in paragraphs 9, 10, and 11.

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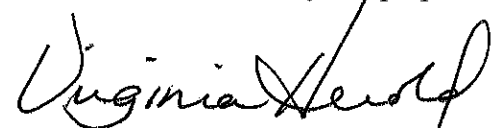
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**PRAYER**

**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 Tiffany Nicole DiStefano, also known as Tiffany Nicole Burkhardt for a Pharmacy Technician license; and,
2. Taking such other and further action as deemed necessary and proper.

DATED: 3/22/17



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

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