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

In the Matter of the Statement of Issues
Against:

**DELFINO NAVA, JR.
15357 Virginia Ave.
Paramount, CA 90723
Pharmacy Technician Registration
Application**

Respondent.

Case No. 3672
OAH No. L-2011061451
DEFAULT DECISION AND ORDER

[Gov. Code, § 11520]

FINDINGS OF FACT

1. On or about April 27, 2011, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Statement of Issues No. 3672 against Delfino Nava, Jr. (Respondent) before the Board of Pharmacy.
 2. On or about October 20, 2008, Respondent filed an application dated September 9, 2008, with the Board of Pharmacy to obtain a Pharmacy Technician Registration Application.
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1 3. On or about January 7, 2010, the Board issued a letter denying Respondent's
2 application for a Pharmacy Technician Registration Application. On or about January 27, 2010,
3 Respondent appealed the Board's denial of his application and requested a hearing.

4 4. On or about May 4, 2011, Corinia Talaro, an employee of the Department of Justice,
5 served by Certified Mail a copy of the Statement of Issues No. 3672, Statement to Respondent,
6 Notice of Defense, Request for Discovery, Government Code sections 11507.5, 11507.6, and
7 11507.7, and Notice from Respondent/Applicant to Respondent's address on the application form,
8 which was and is 15357 Virginia Ave., Paramount, CA 90723. A copy of the Statement of
9 Issues is attached as exhibit A, and is incorporated herein by reference.

10 5. Service of the Statement of Issues was effective as a matter of law under the
11 provisions of Government Code section 11505, subdivision (c).

12 6. On August 18, 2011, a Notice of Hearing was served by certified mail at
13 Respondent's address of record, and it informed him that an administrative hearing in this matter
14 was scheduled for January 18, 2012. Respondent failed to appear at that hearing.

15 7. Business and Professions Code section 118 states, in pertinent part:

16 (a) The withdrawal of an application for a license after it has been filed with a
17 board in the department shall not, unless the board has consented in writing to such
18 withdrawal, deprive the board of its authority to institute or continue a proceeding
19 against the applicant for the denial of the license upon any ground provided by law or
20 to enter an order denying the license upon any such ground.

21 8. Government Code section 11506 states, in pertinent part:

22 (c) The respondent shall be entitled to a hearing on the merits if the respondent
23 files a notice of defense, and the notice shall be deemed a specific denial of all parts
24 of the accusation not expressly admitted. Failure to file a notice of defense shall
25 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
26 may nevertheless grant a hearing.

27 9. California Government Code section 11520 states, in pertinent part:

28 (a) If the respondent either fails to file a notice of defense or to appear at the
hearing, the agency may take action based upon the respondent's express admissions
or upon other evidence and affidavits may be used as evidence without any notice to
respondent; and where the burden of proof is on the respondent to establish that the
respondent is entitled to the agency action sought, the agency may act without taking
evidence.

Exhibit A

Statement of Issues No. 3672

1 KAMALA D. HARRIS
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2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
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300 So. Spring Street, Suite 1702
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Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Statement of Issues.
11 Against:

Case No. 3672

12 **DELFINO NAVA, JR.**
13 **15357 Virginia Ave.**
Paramount, CA 90723
14 **Pharmacy Technician Registration**
Application

STATEMENT OF ISSUES

15 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about October 20, 2008, the Board of Pharmacy (Board) received an
23 application for a Pharmacy Technician Registration from Delfino Nava, Jr., also known as
24 Delfino Nava, and Delvino Nava Jr. (Respondent). On or about September 9, 2008, Respondent
25 certified under penalty of perjury to the truthfulness of all statements, answers, and
26 representations in the application. The Board denied the application on January 7, 2010.

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JURISDICTION

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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 applicant has
7 one of the following:

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

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

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

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

21 "(b) Notwithstanding any other provision of this code, no person shall be denied a license
22 solely on the basis that he or she has been convicted of a felony if he or she has obtained a
23 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
24 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
25 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
26 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
27 Section 482.

28

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

4 5. Section 4301 of the Code states:

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

8

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

11

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

14

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

1 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
2 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
3 indictment.

4
5 6. California Code of Regulations, title 16, section 1770, states:

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

12 **DRUG STATUTE**

13 7. Marijuana is a Schedule I controlled substance as designated by California Health and
14 Safety Code section 11054(d)(13) and is categorized as a dangerous drug pursuant to Business
15 and Professions Code 4022.

16 **FIRST CAUSE FOR DENIAL OF APPLICATION**

17 **(Criminal Conviction)**

18 8. Respondent's application is subject to denial under section 480, subdivision (a)(1), in
19 conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was
20 convicted of a crime that evidences potential unfitness to perform the functions authorized by a
21 licensed pharmacy technician. The circumstances are as follows:

22 9. On or about June 4, 2007, in the criminal proceeding entitled *The People of the State*
23 *of California v. Delfino Nava* (Super. Ct. Los Angeles County, 2007, No. 7BF01352),
24 Respondent entered a plea of *nolo contendere* and was convicted of one misdemeanor count of
25 violating Vehicle Code section 23222, subdivision (b) [possession of marijuana while driving].
26 The Court sentenced Respondent to 3 days in the Los Angeles County Jail and denied probation.
27 The circumstances surrounding the conviction are that during a traffic stop on March 2, 2007, an
28 officer of the Los Angeles County Sheriff's Department detected a strong smell of marijuana

1 coming from Respondent's vehicle. When asked if there were any narcotics in the vehicle or on
2 his person, Respondent stated, "Yes, I have weed in my pocket and I smoked earlier in my car."
3 Upon searching Respondent and his vehicle, the officer discovered a clear plastic bag containing
4 marijuana. On or about December 24, 2008, Respondent's conviction was set aside pursuant to
5 Penal Code section 1203.4.

6 **SECOND CAUSE FOR DENIAL OF APPLICATION**

7 **(False Statements in Application)**

8 10. Respondent's application is subject to denial under section 480, subdivision (c), in
9 that Respondent knowingly made a false statement of fact in his application for licensure. The
10 circumstances are as follows:

11 11. On or about September 9, 2008, Respondent submitted an application for licensure to
12 the Board. The application included the following question: "Have you ever been convicted of or
13 pled no contest to a violation of any law of a foreign country, the United States or any state laws
14 or local ordinances?" The application explained that in answering the question Respondent must
15 include all misdemeanors and/or felonies regardless of how much time had passed since the
16 conviction. The application further explained that Respondent must include any convictions that
17 may have been set aside pursuant to Penal Code section 1203.4.

18 12. To this question, Respondent answered, "No."

19 13. Respondent then signed the applicant affidavit as follows, "I, Delfino Nava Jr.,
20 hereby attest to the fact that I am the applicant whose signature appears below. I understand that
21 falsification of the information on this form may constitute grounds for denial or revocation of the
22 license. I hereby certify under penalty of perjury under the laws of the State of California to the
23 truth and accuracy of all statements, answers and representations made in this application,
24 including all supplementary statements. I also certify that I have read and understand the
25 instructions attached to this application."

26 14. Due to an apparent clerical error in Respondent's initial application related to his
27 dates of education/training, Respondent submitted another application for licensure on or about
28 November 25, 2008. The application included the following question: "Have you ever been

1 convicted of or pled no contest to a violation of any law of a foreign country, the United States or
2 any state laws or local ordinances?" The application explained that in answering the question
3 Respondent must include all misdemeanors and/or felonies regardless of how much time had
4 passed since the conviction. The application further explained that Respondent must include any
5 convictions that may have been set aside pursuant to Penal Code section 1203.4.

6 15. To this question, Respondent again answered, "No."¹

7 16. Respondent then signed the applicant affidavit as follows, "I, Delfino Nava Jr.,
8 hereby attest to the fact that I am the applicant whose signature appears below. I understand that
9 falsification of the information on this form may constitute grounds for denial or revocation of the
10 license. I hereby certify under penalty of perjury under the laws of the State of California to the
11 truth and accuracy of all statements, answers and representations made in this application,
12 including all supplementary statements. I also certify that I have read and understand the
13 instructions attached to this application."

14 17. Complainant refers to, and by this reference incorporates, the allegations set forth
15 above in paragraph 8, inclusive, as though set forth fully herein.

16 **THIRD CAUSE FOR DENIAL OF APPLICATION**

17 **(Acts Warranting Denial)**

18 18. Respondent's application is subject to denial under section 480, subdivision (a)(3), in
19 conjunction with section 4301, subdivisions (g), (j) and (l), in that Respondent has engaged in
20 acts that if done by a licentiate would be grounds for suspension or revocation. The
21 circumstances are as follows:

22 19. Respondent has a history of violating state and federal laws regulating controlled
23 substances and dangerous drugs as follows:

24 _____

25 ¹ Although Respondent was obligated to disclose all convictions regardless of whether they had
26 been set aside pursuant to section 1203.4, it should be noted that Respondent's conviction had not yet been
27 set aside at the time in which he submitted his applications.

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(a) Compton Sup. Ct., Case No. 8CM06112-01: On or about July 19, 1998, Respondent was arrested and later charged with violating Health and Safety Code section 11377(a) [possession of controlled substance]. Ultimately, the case was not prosecuted/dismissed.

(b) Compton Sup. Ct. Case No. TA05788401: On or about October 27, 2000, Respondent was arrested and later charged with violating Health and Safety Code section 11351 [possession with intent to sell controlled substance] and Health and Safety Code section 11378 [possession of controlled substance]. Ultimately, the case was not prosecuted/dismissed.

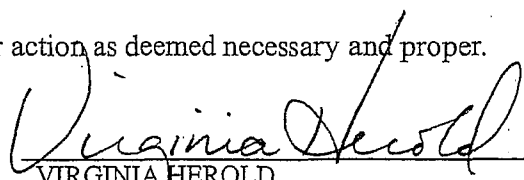
20. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 7 through 16, inclusive, as though set forth fully herein.

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 Delfino Nava, Jr. for a Pharmacy Technician Registration Application;
- 2. Taking such other and further action as deemed necessary and proper.

DATED: 4/27/11



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

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