

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

In the Matter of the Statement of Issues
Against:

Case No. 3954

OAH No. 2012070661

JEFFREY RUBEN ESCANDON

Pharmacy Technician Applicant

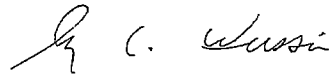
Respondent.

ORDER DENYING RECONSIDERATION

The Board of Pharmacy having read and considered respondent's petition for reconsideration of the board's decision effective May 2, 2013. NOW THEREFORE IT IS ORDERED that the petition for reconsideration is denied. The Board of Pharmacy's Decision and Order effective May 2, 2013, is the Board of Pharmacy's final decision in this matter.

Date: April 23, 2013

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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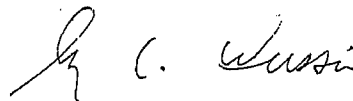
DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on May 2, 2013.

It is so ORDERED on April 2, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



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JEFFREY RUBEN ESCANDON,
a.k.a. JEFF ESCALDON,
a.k.a. JEFF ESCANDON,

Respondent.

Case No. 3954

OAH No. 2012070661

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 15, 2013, in Los Angeles.

Travis Peery, Deputy Attorney General, represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Respondent Jeffrey Ruben Escandon, also known as Jeff Escaldon, also known as Jeff Escandon, appeared and represented himself.

Oral and documentary evidence was received. The record was closed and the matter was submitted on January 15, 2013.

FACTUAL FINDINGS

Jurisdiction

1. On March 9, 2009, respondent filed an application with the Board for a pharmacy technician registration. The Board denied the application on June 29, 2010. By letter dated August 23, 2010, respondent appealed the denial of his registration application.

2. On about June 1, 2012, complainant filed the Statement of Issues in her official capacity. Respondent timely filed a notice of defense.

Respondent's Convictions

3. On June 29, 2009, in the Superior Court of California, County of Los Angeles, Case No. 8MP14543, respondent pled nolo contendere and was convicted of violating Vehicle Code section 23152, subdivision (b) (driving under the influence), a misdemeanor, the court finding a factual basis for respondent's plea. The court suspended imposition of sentence. The court placed respondent on summary probation for 60 months under terms and conditions including that respondent pay fines and fees totaling \$2,004, enroll and participate in and successfully complete an 18-month second-offender alcohol and other drug education and counseling program, and serve 196 hours in the Los Angeles County Jail.

4. The circumstances underlying the conviction are that on June 14, 2008, respondent was driving and was stopped by the California Highway Patrol (CHP). Respondent submitted to a Preliminary Alcohol Screening Test (PAS) that resulted in breath alcohol content levels of 0.234 and 0.205 percent.

5. Respondent paid completed the terms of probation. On August 3, 2011, the court granted respondent's motion for early termination of probation. On December 16, 2011, the court granted respondent's petition for dismissal under Penal Code section 1203.4.

6. On July 14, 2006, in the Superior Court of California, County of San Bernardino, Case No. FVI024569, respondent pled nolo contendere and was convicted of violating Penal Code section 245, subdivision (a)(1) (assault with a deadly weapon), a felony. The court placed respondent on formal probation for 36 months under terms and conditions including that respondent pay fines and fees, pay restitution, report to the local police agency gang detail, and serve 365 days in the San Bernardino County Jail.

7. The circumstances underlying the conviction are that on June 7, 2006, respondent and others broke into a home and attacked the residents. Respondent picked up a kitchen knife and ran toward two of the residents with it, but was hit in the head by another resident with a baseball bat, forcing respondent to leave the house. While in hospital being treated for his head injury, respondent threatened a deputy sheriff stating that he would kill the deputy and his family or have his fellow gang members do so. At this hearing, respondent denied having a weapon and denied that he was a gang member at the time of the incident; he admitted that he made the threat, but explained that he was intoxicated at the time.

8. On October 27, 2011, the court granted respondent's motion under Penal Code section 1203.4, reducing the felony count to a misdemeanor, setting aside the conviction, entering a plea of not guilty, and dismissing the case.

9. On February 16, 2006, in the Superior Court of California, County of Los Angeles, Case No. 5MT09837, respondent pled nolo contendere and was convicted of violating Vehicle Code section 14601.1, subdivision (a) (driving while driver's license is suspended or revoked), a misdemeanor, the court finding a factual basis for the plea. The court suspended imposition of sentence and placed respondent on summary probation for 36 months under terms and conditions including that respondent pay fines and fees totaling \$1,276.

10. The circumstances underlying the conviction are that on April 20, 2005, respondent was found to be driving while his driver's license was suspended or revoked. At this hearing, respondent explained that he had to go to the market for his ill mother and forgot that he was on summary probation; he knows he should not have been driving.

11. On September 16, 2004, in the Superior Court of California, County of San Bernardino, Case No. TVI053551, respondent pled guilty and was convicted of violating Vehicle Code section 23152, subdivision (a) (driving under the influence), a misdemeanor. The court withheld pronouncement of judgment and granted respondent his conditional and revocable release for 36 months under terms and conditions including that respondent pay fines and fees totaling \$1,474, violate no law, attend a first-offender alcohol program, have his driver's license restricted to use only for driving to and from employment and during the course of employment, and serve two days in San Bernardino County Jail.

12. The circumstances underlying the conviction are that on April 17, 2004, respondent was driving and was stopped; he appeared intoxicated and was found to have a blood alcohol content of 0.17 per cent.

13. On October 27, 2011, the court granted respondent's motion to set aside the conviction, enter a plea of not guilty, and dismiss the case under Penal Code section 1203.4.

14. On May 2, 1995, in the Superior Court of California, County of San Bernardino, Case No. MVI007488, respondent pled nolo contendere and was convicted of violating Penal Code section 415, subdivision (I) (disturbing the peace), a misdemeanor. The court sentenced respondent to serve three days in the San Bernardino County Jail.

15. The circumstances underlying the conviction are that on April 18, 1995, respondent was fighting in a public place. At this hearing, respondent testified that no alcohol was involved.

Respondent's Registration Application

16. On his March 9, 2009, registration application, respondent certified under penalty of perjury as to the truthfulness of all statements in the application.

17. Respondent failed to disclose on his application his May 2, 1995, misdemeanor conviction. He also wrote on the application that he had been sober since July 2006, but at this hearing testified that he has been sober since July 2008 and that he made a mistake on the application.

Duties of Pharmacy Technicians

18. Joan Coyne, a supervising inspector for the Board, testified about the duties of pharmacy technicians. Coyne has worked for the Board since 1995 and supervises a team of inspector pharmacists who investigate complaints, allegations of drug diversion, and drug use by licensees. She has been a licensed pharmacist since 1982, and owned her own pharmacy for

approximately 10 years, where she hired, trained, and worked with pharmacy technicians. Coyne testified that pharmacy technicians perform non-discretionary duties—they enter data, stock medicines, perform prescriptions intake, meet with patients and provide them their medications, charge patients, attach labels, and do recordkeeping. They have complete access to all medicines in the pharmacy and to patient records and personal information, so honesty is an important character requirement. Pharmacy technicians must know and comply with pharmacy law.

Rehabilitation

19. Respondent is 36 years old. He attended school to receive training to become a pharmacy technician, completing the school program in March 2009. Respondent currently holds a temporary warehouse job. He wishes to obtain employment as a pharmacy technician and is willing to accept a probationary license from the Board.

20. Respondent testified that he takes full responsibility for his poor decisions, which he blames on heavy drinking. He testified that he has had trouble complying with the terms of his criminal probations, admitting that his February and July 2006 convictions violated the terms of probation arising from his September 2004 conviction, and that when he was convicted in June 2009 he was still on probation for his assault conviction. He testified that he made poor choices and decisions because he was drinking a great deal. He admitted that he had been a gang member, but testified that he left the gang about six years ago and no longer associates with gang members.

21. Respondent testified that he has attended numerous Alcoholics Anonymous meetings after completing the court-ordered alcohol programs, and that he still attends AA meetings every Saturday. He testified that the meetings have helped him change his ways, and that he has been sober since August 2009. He testified that he is on step six of the 12-step program, but could not identify or describe step six. Respondent offered no documentation of his attendance at AA meetings and no testimony or letters from any other AA members or from a sponsor to corroborate his testimony. He testified that he just does not want to drink anymore and “cause trouble.”

LEGAL CONCLUSIONS

1. The Board’s highest priority is protection of the public. (Bus. & Prof. Code, § 4001.1.)¹ The Board may deny a license if the applicant has done any act that would be grounds to suspend or revoke the license of a licentiate. (§ 490, subd. (a)(3).)

2. Cause exists to deny respondent’s pharmacy technician registration application for conviction of crimes substantially related to the qualifications, functions, or duties of a licensee, under sections 480, subdivision (a)(1), 490, 4300, and 4301, subdivisions (h), (k), (l),

¹ All further statutory references are to the Business and Professions Code.

(o), and (p), and California Code of Regulations, title 16, section 1770, based on the matters set forth in Factual Findings 3 through 15 and 18 through 21. Respondent was convicted of crimes involving the use of alcohol and involving acts dangerous to others and to the public, which are substantially related to the qualifications, functions, or duties of a licensee. (See §§ 480, 4301.)

3. Cause exists to deny respondent's pharmacy technician registration application for knowingly making false statements of fact, under Business and Professions Code sections 480, subdivision (c), 4300, and 4301, subdivisions (f), (o), and (p), and California Code of Regulations, title 16, section 1770, based on the matters set forth in Factual Findings 16 and 17.

4. Cause exists to deny respondent's pharmacy technician registration application for acts warranting denial of licensure, under Business and Professions Code sections 480, subdivision (a)(3)(A) and (B), 490, 4300, and 4301, subdivisions (f), (h), (j), (k), (l), (o), and (p), and California Code of Regulations, title 16, section 1770, based on the matters set forth in Factual Findings 3 through 21.

5. Respondent's efforts to live in a sober and law-abiding manner are commendable. But respondent was on probation until fairly recently and admits to having had difficulty complying with the terms of probation for his several criminal convictions. He is unsure of the details of his progress through the 12 steps of his AA program and he offered no corroborating evidence of his efforts to remain sober and to change his life. Under the circumstances, additional time is necessary for respondent to establish sufficient rehabilitation for licensure.

ORDER

Respondent Jeffrey R. Escandon's appeal is denied.

DATED: February 22, 2013



HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

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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. 3954

13 **JEFFREY RUBEN ESCANDON**
14 **a.k.a., JEFF ESCALDON**
15 **a.k.a., JEFF ESCANDON**
16 3752 Harriman Avenue
17 Los Angeles, CA 90032

STATEMENT OF ISSUES

16 Respondent.

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 March 9, 2009, the Board of Pharmacy (Board) received an application
23 for Pharmacy Technician Registration from Jeffrey Ruben Escandon, also known as Jeff
24 Escaldon, and Jeff Escandon (Respondent). On or about February 27, 2009, Respondent certified
25 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
26 application. The Board denied the application on June 29, 2010.

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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 STATUTORY PROVISIONS

6 4. Section 480 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 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 in question,
17 would be grounds for suspension or revocation of license.

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

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

25 5. Section 490 states, in pertinent part:

26 "(a) In addition to any other action that a board is permitted to take against a licensee, a
27 board may suspend or revoke a license on the ground that the licensee has been convicted of a

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1 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
2 or profession for which the license was issued.

3 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
4 discipline a licensee for conviction of a crime that is independent of the authority granted under
5 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
6 of the business or profession for which the licensee's license was issued.

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

13 6. Section 4300 provides, in pertinent part, that every license issued by the Board is
14 subject to discipline, including suspension or revocation.

15 7. Section 4301 states, in pertinent part:

16 "The board shall take action against any holder of a license who is guilty of unprofessional
17 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

18 Unprofessional conduct shall include, but is not limited to, any of the following:

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

23

24 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
25 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
26 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
27 to the extent that the use impairs the ability of the person to conduct with safety to the public the
28 practice authorized by the license.

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

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

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall 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 board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her 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.

....

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

1 Respondent, the officer detected a strong odor of alcoholic beverage emitting from is vehicle. He
2 was observed to have red, watery eyes, and slow and slurred speech. When asked if he had
3 consumed any alcoholic beverages, Respondent stated, "4 beers." While at the scene, Respondent
4 submitted to a Preliminary Alcohol Screening Test (PAS) that resulted in a breath-alcohol content
5 level of 0.234% on the first reading and 0.205% on the second. During a search of Respondent's
6 person, the officer found two tablets of Soma and two tablets of a form of Valium in
7 Respondent's front right pocket. Respondent did not have a prescription for these tablets and
8 they were not in a container with a label. Respondent was subsequently arrested for violating
9 Health and Safety Code section 11350 [possession of a controlled substances], Business and
10 Professions Code section 4060 [possession of a prescription drug without a prescription], and
11 Vehicle Code section 23152, subdivision (a) [driving under the influence of alcohol or drugs].
12 During the booking procedure, Respondent refused to submit to a toxicology screening test.

13 b. On or about July 14, 2006, after pleading nolo contendere, Respondent was convicted
14 of one felony count of violating Penal Code section 245, subdivision (a)(1) [assault with a deadly
15 weapon] in the criminal proceedings entitled *The People of the State of California v. Jeff*
16 *Escandon* (Super. Ct. San Bernardino County, 2006, No. FVI024569). The Court sentenced
17 Respondent to serve 365 days in San Bernardino County Jail and placed him on 36 months formal
18 probation, with terms and conditions. The circumstances surrounding the conviction are that on or
19 about June 7, 2006, Respondent kicked in the front door of L.C.'s resident and attacked her and
20 her son. During the attack, Respondent picked up a knife from the kitchen and ran toward L.C.
21 and her son with it. L.C.'s son hit Respondent with a baseball bat forcing Respondent to leave
22 from the house.

23 c. On or about February 16, 2006, after pleading nolo contendere, Respondent was
24 convicted of one misdemeanor count of violating Vehicle Code section 14601.1, subdivision (a)
25 [driving while driver's license is suspended or revoked] in the criminal proceedings entitled *The*
26 *People of the State of California v. Jeffrey Escandon* (Super. Ct. Los Angeles County, 2006, No.
27 5MT09837). The Court sentenced Respondent to serve ten days in Los Angeles County Jail and
28 placed him on 36 months probation, with terms and conditions. The circumstances surrounding

1 the conviction are that on or about April 20, 2005, Respondent was found to be driving while his
2 driver's license was suspended or revoked.

3 d. On or about September 16, 2004, after pleading nolo contendere, Respondent was
4 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a)
5 [driving under the influence of alcohol or drugs] in the criminal proceedings entitled *The People*
6 *of the State of California v. Jeffrey Ruben Escandon* (Super. Ct. San Bernardino County, 2004,
7 No. TVI053551). The Court sentenced Respondent to serve 29 days in San Bernardino County
8 Jail and ordered pronouncement of Judgment withheld and a conditional and revocable release
9 granted for a period of 36 months probation, with terms and conditions. The circumstances
10 surrounding the conviction are that on or about April 17, 2004, during a traffic stop by the San
11 Bernardino Sheriff's Department, Respondent was contacted. While speaking to Respondent, the
12 officer detected a strong odor of an alcoholic beverage emitting from his breath. When asked if
13 he had drank any alcoholic beverages, Respondent admitted to having one beer. During the
14 booking procedure, Respondent submitted to a blood test that resulted in a blood-alcohol content
15 level of 0.17%.

16 e. On or about May 2, 1995, after pleading nolo contendere, Respondent was convicted
17 of one misdemeanor count of violating Penal Code section 415, subdivision (1) [fighting in a
18 public place] in the criminal proceedings entitled *The People of the State of California v. Jeff*
19 *Escandon* (Super. Ct. San Bernardino County, 1995, No. MVI07488). The Court sentenced
20 Respondent to serve 3 days in San Bernardino County Jail. The circumstances surrounding the
21 conviction are that on or about April 18, 1995, Respondent fought in a public place.

22 **SECOND CAUSE FOR DENIAL OF APPLICATION**

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

24 12. Respondent application is subject to denial under section 480, subdivision (c), in that
25 on or about February 27, 2009, Respondent knowingly made a false statement of fact by failing to
26 disclose his 1995 conviction case against him, on his application for licensure. In addition,
27 Respondent signed under penalty of perjury, under the laws of the State of California, that the
28 forgoing was true and correct, on his application for licensure. Complainant refers to, and by this

1 reference incorporates, the allegations set forth in paragraph 11, subparagraphs (e), as though set
2 forth fully.

3 **THIRD CAUSE FOR DENIAL OF APPLICATION**

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

5 13. Respondent's application is subject to denial under sections 4301, subdivision (p) and
6 480, subdivisions (a)(3)A) and (a)(3)(B), in that Respondent committed acts which if done by a
7 licentiate of the business and profession in question, would be grounds for suspension or
8 revocation of his license as follows:

9 a. Respondent was convicted of crimes substantially related to the qualifications,
10 functions, or duties of a pharmacy technician which to a substantial degree evidence his present
11 or potential unfitness to perform the functions authorized by his license in a manner consistent
12 with the public health, safety, or welfare, in violation of sections 4031, subdivision (l), and 490,
13 in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,
14 and by this reference incorporates, the allegations set forth above in paragraph 11, subparagraphs
15 (a) through (e), inclusive, as though set forth fully.

16 b. On or about June 7, 2006, Respondent committed acts involving moral turpitude,
17 dishonesty, fraud, or deceit in violation of section 4301, subdivision (f). Complainant refers to,
18 and by this reference incorporates, the allegations set forth above in paragraph 11, subparagraphs
19 (b) and (e), inclusive, as though set forth fully.

20 c. Respondent used alcoholic beverages to an extent or in a manner dangerous or
21 injurious to himself, another person, or the public, in violation of section 4301, subdivision (h).
22 Complainant refers to, and by this reference incorporates, the allegations set forth above in
23 paragraph 11, subparagraphs (a) and (d), inclusive, as though set forth fully.

24 d. Respondent was convicted of crimes involving the consumption of alcoholic
25 beverages, in violation of section 4301, subdivision (k). Complainant refers to, and by this
26 reference incorporates, the allegations set forth above in paragraph 11, subparagraphs (a) and (d),
27 inclusive, as though set forth fully.

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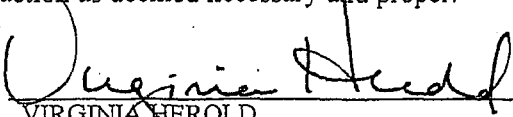
1 e. Respondent was found to be in possession of a controlled substance, in violation of
2 section 4301, subdivisions (j) and (o). Complainant refers to, and by this reference incorporates,
3 the allegations set forth above in paragraph 11, subparagraph (a), as though set forth fully.

4 PRAYER

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
6 and that following the hearing, the Board issue a decision:

- 7 1. Denying the application of Respondent for registration as a Pharmacy Technician;
8 and
9 2. Taking such other and further action as deemed necessary and proper.

10 DATED: 6/1/12

11 
12 VIRGINIA HEROLD
13 Executive Officer
14 Board of Pharmacy
15 Department of Consumer Affairs
16 State of California
17 Complainant

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