

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

In the Matter of the Statement of Issues  
Against:

**GREGORY LEE RAND,**

Respondent.

Case No. 4289

OAH No. 2012100928

**FINAL DECISION AFTER NONADOPTION OF PROPOSED DECISION**

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings on June 26, 2013, in Sacramento, California.

Complainant Virginia Herold, Executive Officer of the Board of Pharmacy, was represented by Geoffrey S. Allen, Deputy Attorney General.

Gregory Lee Rand appeared on his own behalf.

The case was submitted for decision on June 26, 2013.

The proposed decision of the Administrative Law Judge was submitted to the Board of Pharmacy ("Board") on July 3, 2013. After due consideration thereof, the Board did not adopt the proposed decision and thereafter on September 25, 2013 issued an Order of Non Adoption of Proposed Decision, and subsequently on November 1, 2013, issued an Order Fixing Date for Submission of Argument. Written argument having been timely received from Complainant, and none from respondent, and the time for filing written argument in this matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the Board, pursuant to Section 11517 of the Government Code, hereby makes the following decision:

## FACTUAL FINDINGS

1. Virginia Herold ("complainant") is the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs. She made and filed the Statement of Issues and First Amended Statement of Issues in her official capacity.

2. Gregory Lee Rand ("respondent") filed an Application for Registration (Application) as a Pharmacy Technician with the Board on August 1, 2011. On July 28, 2011, he certified under penalty of perjury to the truthfulness of all statements, answers and representations in the Application. The Board denied the Application on December 20, 2011, and respondent appealed.

3. Respondent disclosed five criminal convictions on his Application, all of which complainant contends are substantially related to the qualifications, functions and duties of a licensed pharmacy technician. Complainant further contends that such convictions demonstrate that respondent has engaged in acts involving moral turpitude, dishonesty, fraud or deceit. At the time of hearing, complainant filed a First Amended Statement of Issues which further alleged that respondent possessed a controlled substance (marijuana) on February 22, 2006.

### *Criminal Convictions*

4. Respondent was convicted of the following criminal offenses, all of which are substantially related to the qualifications, functions and duties of a licensed pharmacy technician:

a. On April 4, 2006, in a criminal proceeding entitled *People v. Gregory Rand* in Sacramento County Superior Court (Case No. 06M02813), respondent was convicted by plea of nolo contendere of violating Penal Code section 647, subdivision (b), prostitution, a misdemeanor. Respondent was placed on informal probation for three years. He was ordered to pay a \$100 fine and serve 45 days in the County Jail, with time to be completed through the Sheriff's Work Program (SWP). Respondent complied with and completed all the terms of his sentence.

b. On May 6, 2002, in a criminal proceeding entitled *People v. Gregory Lee Rand, Sr.* in Sacramento County Superior Court (Case No. 02T01751), respondent was convicted by plea of nolo contendere of violating Penal Code section 23152, subdivision (a), driving while under the influence of alcohol, a misdemeanor. Respondent was given a suspended sentence and placed on informal probation for three years, the terms of which included payment of \$1,134 in fines and fees, or serving 14 days in the County Jail in lieu of fine, with time to be completed through SWP, and enrollment in a first offender DUI program. Respondent complied with and completed all the terms of his sentence.

c. On May 28, 1998, in a criminal proceeding entitled *People v. Gregory Lee Rand, Sr.* in Sacramento County Superior Court, (Case No. 98M06693), respondent was convicted by plea of nolo contendere of violating Penal Code section 647, subdivision (b), prostitution, a misdemeanor. Respondent was placed on informal probation for three years. He was ordered to pay a \$100 fine and serve 10 days in the County Jail, with time to be completed through SWP. Respondent complied with and completed all the terms of his sentence.

d. On February 2, 1984, in a criminal proceeding entitled *The State of Ohio v. Gregory Rand in the Court of Common Pleas*, State of Ohio, Hamilton County (Case No. B834294), respondent was convicted after a court trial and verdict (guilty) of violating Section 2911.02 of the Ohio Revised Code, robbery, a felony. Respondent was sentenced to a minimum term of eight years and a maximum term of 15 years in the Ohio Penitentiary, Columbus, Ohio. He was released on parole after seven years, and completed his parole in 1991.

e. On February 1, 1982, in a criminal proceeding entitled *The State of Ohio v. Gregory Lee Rand in the Court of Common Pleas*, State of Ohio, Hamilton County (Case No. B814763), respondent was convicted following a plea of no contest of violating Section 2911.02 of the Ohio Revised Code, robbery, a felony. Respondent was sentenced to a minimum term of two years and a maximum term of 15 years in the Ohio State Reformatory, Mansfield, Ohio. He was released on parole after serving eight months, and completed his parole in 1982.

5. Respondent explained the circumstances underlying the above convictions, beginning with the most recent offense, as follows:

a. The 2006 conviction arose during the course of a Sacramento Police prostitution sting operation. On February 22, 2006, respondent approached an undercover police officer, and agreed to meet with her in a hotel room. He was subsequently arrested for loitering for prostitution and possession of marijuana. Respondent acknowledged that he had a "couple of grams" of marijuana in his jacket pocket at that time.

b. The 2002 conviction arose from circumstances on April 4, 2002, at which time respondent was driving northbound on Watt Avenue approximately 50 miles per hours (mph) in a 45 mph zone. He was pulled over by a California Highway Patrol Officer who suspected that he was driving under the influence (DUI). Respondent was given a field sobriety test and then arrested for DUI.

c. The 1998 conviction for prostitution also involved Sacramento undercover police officers. On May 8, 1998, respondent was approached by a female undercover officer while he was stopped at a stop sign. He explained at hearing that he was new to the Sacramento area and just wanted to party. He was instructed to walk across the street where he was arrested by police for loitering for prostitution.

d. The 1984 felony conviction related to events on November 16, 1983. Respondent was age 26. He shoplifted retail merchandise from a grocery store in Lockland, Ohio. The store owner attempted to grab him and respondent pushed him away.

e. The 1982 conviction related to events on November 4, 1981. Respondent was in the parking lot of Tri-County Mall in Springfield, Ohio. He took a woman's purse and attempted to flee. He was immediately arrested by police.

### *Respondent's Testimony*

6. Respondent regrets his actions leading to the above arrests and convictions. His 1982 and 1984 convictions occurred when he was young. He had served briefly in the military, 19 months in the United States Air Force, and he was thereafter unemployed. Both felonies occurred around the holidays. Though serious felony offenses, they now date back 30 years. Respondent complied with and completed all terms of his criminal sentences. Six years have passed since his most recent misdemeanor conviction.

7. Respondent is now age 56. He is married. He and his wife have four children, all adults. His wife is on disability. Respondent works as a grill cook at Del Taco.

Respondent enrolled in a pharmacy technician program at Anthem College between January 10 and June 24, 2011. He explained that he would like work as a pharmacy technician because it is stable employment, there is always a need for pharmacy technicians and he enjoys helping people. He has worked as an extern in a closed door pharmacy. He would like to pursue work as a pharmacy technician at Kaiser Hospital, or with a large drug store such as Rite Aid.

Respondent's employment history includes work in several dental laboratories. He worked for California Custom Castings through October 1997, and then for Oral Arch Dental Laboratory for 10 years between January 1998 and 2008. He worked for a short time for Chrome Works Dental Laboratory in Chico, but stopped because of the stress associated with commuting 200 miles round trip from Sacramento.

8. Respondent has had no subsequent DUI arrests. Respondent denies using any controlled substances. He understands the Board's concern that he will have access to controlled substances as a pharmacy technician. He acknowledged recreational marijuana use in the past, but denied any use since around 2008. He denied any other past drug use. Respondent has distanced himself and no longer associates with those with whom he was involved with drugs. He is willing to subject himself to random drug testing as a condition of registration as a pharmacy technician. Respondent impresses as one who acknowledges and regrets past criminal wrongdoing and indiscretions, and is genuinely committed and anxious to move beyond his past life, and towards stable and responsible employment as a pharmacy technician.

### *Discussion*

9. Respondent's actions leading to his criminal convictions harmed the public, and by engaging in multiple criminal acts, respondent repeatedly put the public and society at risk. Although respondent has complied with all the terms of each of his criminal sentences, respondent has a lengthy criminal history that spans thirty years. Respondent did not provide any written mitigation or rehabilitation evidence at the hearing. There were no letters of support for his application or any type of performance evaluations from prior employers. Respondent did not demonstrate any remorse for his actions nor did respondent take full responsibility for his prior bad acts.

10. Although there was no evidence presented of re-occurrence, the nature of Respondent's past misconduct is serious. Although pharmacy technicians are not independent practitioners and work under the close supervision of registered pharmacists, pharmacy technicians have access to controlled substances as a consequence of their

employment. As a result, pharmacy technicians hold positions of trust and are expected to strictly adhere to rules involving controlled substances and not work while impaired. Pharmacy technicians are also expected to exercise good judgment at all times for the protection of the public.

11. There is a risk to the public that respondent will be unable to conform to the laws and regulations that apply to pharmacy technicians since his prior criminal convictions include dishonesty and theft, and show a failure to follow the rules and poor judgment. Also, respondent has not provided any evidence that he has addressed any of his substance abuse issues for his history involving the dangerous use of alcohol and marijuana. Based on a totality of the circumstances, respondent's rehabilitation appears to be incomplete at this point; thus, warranting a denial of his application for a pharmacy technician registration.

### LEGAL CONCLUSIONS

1. The Administrative Procedure Act (Gov. Code, §§ 11500 et seq.) provides that the burden of proof is upon the applicant seeking licensure. (*Coffin v. Department of Alcoholic Beverage Control* (2006) 139 Cal.App.4<sup>th</sup> 471, 476-477.) Specifically, Government Code section 11504 states:

A hearing to determine whether a right, authority, license, or privilege should be granted, issued, or renewed shall be initiated by filing a statement of issues. The statement of issues shall be a written statement specifying the statutes and rules with which the **respondent must show compliance by producing proof** at the hearing and, in addition, any particular matters that have come to the attention of the initiating party and that would authorize a denial of the agency action sought. (Emphasis added).

2. "Evidence as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence." (Evid. Code, § 115.)

3. Business and Professions Code section 480 provides as follows:

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

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code.

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

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

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

4. Business and Professions Code section 4300, subdivision (c), provides that the Board "may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure."

Business and Professions Code section 4301 provides that the Board shall take action against any holder of a license who is guilty of unprofessional conduct, including the following:

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

[REDACTED] ... [REDACTED]

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

[REDACTED] ... [REDACTED]

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.

5. Business and Professions Code section 4060 provides: "No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, ..." (See also Health & Saf. Code, § 11357; Veh. Code, § 23222.)

6. Cause to deny respondent's Application exists under Business and Professions Code sections 480, subdivision (a)(1) and (3); 4300, subdivision (c); and 4301, subdivision (l), by reason of the matters set forth in Findings 4 and 5. Respondent was convicted of criminal offenses that are substantially related to the qualifications, functions and duties of a licensed pharmacy technician.

7. Cause to deny respondent's Application exists under Business and Professions Code sections 480, subdivisions (a)(1), (2) and (3); 4300, subdivision (c); and 4301, subdivision (f), by reason of the matters set forth in Finding 4 and 5. Respondent engaged in acts involving moral turpitude, dishonesty, fraud or deceit.

8. Cause to deny respondent's Application exists under Business and Professions Code sections 480, subdivision (a)(3), and 4301, subdivision (j). Respondent possessed a controlled substance in violation of Business and Professions Code section 4060. (Findings

5a and 8.) Unprofessional conduct includes the violation of any of the statutes of this state or of the United States regulating controlled substances and dangerous drugs. (Bus. & Prof. Code, § 4301, subd. (j).)

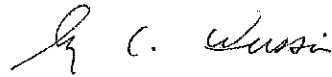
**ORDER**

The application of Gregory Lee Rand for Registration as a Pharmacy Technician is denied.

This Decision shall become effective on March 10, 2014.

It is so ORDERED ON February 6, 2014.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

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STAN C. WEISSER  
Board President

**BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
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In the Matter of the Statement of Issues Against:

GREGORY RAND

Respondent.

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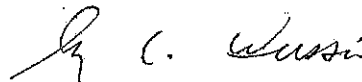
TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

**ORDER FIXING DATE FOR SUBMISSION OF ARGUMENT**

The transcript of the hearing in the above-entitled matter having now become available, the parties are hereby notified of the opportunity to submit written arguments in accordance with the Order of Nonadoption of Proposed Decision dated September 25, 2013. In addition to any arguments the parties may wish to submit, the board is interested in argument directed at the following issue: (1) whether the license should be granted, (2) whether the license should be granted, and if so, (3) what terms and conditions would be appropriate.

Pursuant to said Order written argument shall be filed with the Board of Pharmacy, 1625 N. Market Blvd, Suite N-219, Sacramento, California, on or before July 5, 2012. **No new evidence may be submitted.**

IT IS SO ORDERD this 1<sup>st</sup> day of November 2013.



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STAN C. WEISSER  
President, Board of Pharmacy  
Department of Consumer Affairs



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

In the Matter of the Statement of Issues  
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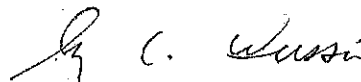
ORDER OF NONADOPTION OF PROPOSED DECISION

YOU ARE HEREBY NOTIFIED pursuant to Section 11517 of the Government Code, the California State Board of Pharmacy hereby non-adopts the proposed decision in Administrative Case No. 4289. A copy of the proposed decision is attached hereto.

The board will decide the case itself upon the record, including the transcript, exhibits and written argument of the parties, without taking additional evidence. The Board has ordered a transcript and will notify the parties when the transcript has been prepared and of the date set for the submission of written argument.

IT IS SO ORDERED this 25<sup>th</sup> day of September, 2013.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

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STAN C. WEISSER  
Board President

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

In the Matter of the Statement of Issues  
Against:

GREGORY LEE RAND,

Respondent.

Case No. 4289

OAH No. 2012100928

**PROPOSED DECISION**

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Complainant Virginia Herold, Executive Officer of the Board of Pharmacy, was represented by Geoffrey S. Allen, Deputy Attorney General.

Gregory Lee Rand appeared on his own behalf.

The case was submitted for decision on June 26, 2013.

**FACTUAL FINDINGS**

1. Virginia Herold (complainant) is the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs. She made and filed the Statement of Issues and First Amended Statement of Issues in her official capacity.

2. Gregory Lee Rand (respondent) filed an Application for Registration (Application) as a Pharmacy Technician with the Board on August 1, 2011. On July 28, 2011, he certified under penalty of perjury to the truthfulness of all statements, answers and representations in the Application. The Board denied the Application on December 20, 2011, and respondent appealed.

3. Respondent disclosed five criminal convictions on his Application, all of which complainant contends are substantially related to the qualifications, functions and duties of a licensed pharmacy technician. Complainant further contends that such

convictions demonstrate that respondent has engaged in acts involving moral turpitude, dishonesty, fraud or deceit. At the time of hearing, complainant filed a First Amended Statement of Issues which further alleged that respondent possessed a controlled substance (marijuana) on February 22, 2006.

#### *Criminal Convictions*

4. Respondent was convicted of the following criminal offenses, all of which are substantially related to the qualifications, functions and duties of a licensed pharmacy technician:

- a. On April 4, 2006, in a criminal proceeding entitled *People v. Gregory Rand* in Sacramento County Superior Court (Case No. 06M02813), respondent was convicted by plea of nolo contendere of violating Penal Code section 647, subdivision (b), prostitution, a misdemeanor. Respondent was placed on informal probation for three years. He was ordered to pay a \$100 fine and serve 45 days in the County Jail, with time to be completed through the Sheriff's Work Program (SWP). Respondent complied with and completed all the terms of his sentence.
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e. On February 1, 1982, in a criminal proceeding entitled *The State of Ohio v. Gregory Lee Rand* in the Court of Common Pleas, State of Ohio, Hamilton County (Case No. B814763), respondent was convicted following a plea of no contest of violating Section 2911.02 of the Ohio Revised Code, robbery, a felony. Respondent was sentenced to a minimum term of two years and a maximum term of 15 years in the Ohio State Reformatory, Mansfield, Ohio. He was released on parole after serving eight months, and completed his parole in 1982.

5. Respondent explained the circumstances underlying the above convictions, beginning with the most recent offense, as follows:

- a. The 2006 conviction arose during the course of a Sacramento Police prostitution sting operation. On February 22, 2006, respondent approached an undercover police officer, and agreed to meet with her in a hotel room. He was subsequently arrested for loitering for prostitution and possession of marijuana. Respondent acknowledged that he had a "couple of grams" of marijuana in his jacket pocket at that time.
- b. The 2002 conviction arose from circumstances on April 4, 2002, at which time respondent was driving northbound on Watt Avenue approximately 50 miles per hours (mph) in a 45 mph zone. He was pulled over by a California Highway Patrol Officer who suspected that he was driving under the influence (DUI). Respondent was given a field sobriety test and then arrested for DUI.
- c. The 1998 conviction for prostitution also involved Sacramento undercover police officers. On May 8, 1998, respondent was approached by a female undercover officer while he was stopped at a stop sign. He explained at hearing that he was new to the Sacramento area and just wanted to party. He was instructed to walk across the street where he was arrested by police for loitering for prostitution.
- d. The 1984 felony conviction related to events on November 16, 1983. Respondent was age 26. He shoplifted retail merchandise from a grocery store in Lockland, Ohio. The store owner attempted to grab him and respondent pushed him away.
- e. The 1982 conviction related to events on November 4, 1981. Respondent was in the parking lot of Tri-County Mall in Springfield, Ohio. He took a woman's purse and attempted to flee. He was immediately arrested by police.

#### *Respondent's Testimony*

6. Respondent regrets his actions leading to the above arrests and convictions. His 1982 and 1984 convictions occurred when he was young. He had served briefly in the military, 19 months in the United States Air Force, and he was thereafter unemployed. Both felonies occurred around the holidays. Though serious felony offenses, they now date back

30 years. Respondent complied with and completed all terms of his criminal sentences. Six years have passed since his most recent misdemeanor conviction.

7. Respondent is now age 56. He is married. He and his wife have four children, all adults. His wife is on disability. Respondent works as a grill cook at Del Taco.

Respondent enrolled in a pharmacy technician program at Anthem College between January 10 and June 24, 2011. He explained that he would like work as a pharmacy technician because it is stable employment, there is always a need for pharmacy technicians and he enjoys helping people. He has worked as an extern in a closed door pharmacy. He would like to pursue work as a pharmacy technician at Kaiser Hospital, or with a large drug store such as Rite Aid.

Respondent's employment history includes work in several dental laboratories. He worked for California Custom Castings through October 1997, and then for Oral Arch Dental Laboratory for 10 years between January 1998 and 2008. He worked for a short time for Chrome Works Dental Laboratory in Chico, but stopped because of the stress associated with commuting 200 miles round trip from Sacramento.

8. Respondent has had no subsequent DUI arrests. Respondent denies using any controlled substances. He understands the Board's concern that he will have access to controlled substances as a pharmacy technician. He acknowledged recreational marijuana use in the past, but denied any use since around 2008. He denied any other past drug use. Respondent has distanced himself and no longer associates with those with whom he was involved with drugs. He is willing to subject himself to random drug testing as a condition of registration as a pharmacy technician. Respondent impresses as one who acknowledges and regrets past criminal wrongdoing and indiscretions, and is genuinely committed and anxious to move beyond his past life, and towards stable and responsible employment as a pharmacy technician.

#### *Discussion*

9. Respondent's more serious felony offenses relate back 30 years. They occurred at a time when he was young and resorted to criminal activity without an awareness of the consequences. He served significant time in prison at an early age, and has engaged in no similar offense since that time. Rather, respondent has worked to improve himself and he has a fairly steady record of employment through the present. His work history includes a number of years in three dental laboratories. At age 56, he is now seeking more steady employment as a pharmacy technician. He has worked as a pharmacy technician extern in one pharmacy to date, and it is work he enjoys.

Respondent's more recent convictions do not appear to reflect ongoing problems with alcohol or prostitution. He completed his criminal sentences and is no longer on criminal probation. He had a single DUI. It has been seven years since his most recent conviction. At age 56, he and his wife are more settled. They have raised their four children. The

Board's concerns relating to respondent's past poor judgments and inability to conform with laws relating to DUI and prostitution appear, given respondent's present circumstances, to have diminished with time. And when balanced against the other positive developments in his life they should not be an obstacle to his being considered for Board licensure on a probationary basis.

10. Complainant is primarily concerned with respondent's past possession and recreational use of marijuana. Respondent has denied any marijuana use over the past five years and there is no evidence to the contrary. Respondent has no history of any other non-prescription possession or use of controlled substances. There is no evidence that respondent was ever involved with possession for sale of marijuana or any other controlled substances. The Board should be concerned any time an applicant for registration as a pharmacy technician has a history of marijuana possession or use. Pharmacy technicians are in a position where they have access to controlled substances. In this case, however, such concerns are best managed by placing respondent on probation, requiring that he abstain from use of alcohol and controlled substances, and subjecting him to random drug screening. Respondent is willing to abide by such conditions.

#### LEGAL CONCLUSIONS

1. Business and Professions Code section 480 provides as follows:
  - (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:
    - (1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code.
    - (2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or
    - (3) (A) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

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

2. Business and Professions Code section 4300, subdivision (c), provides that the Board "may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure."

Business and Professions Code section 4301 provides that the Board shall take action against any holder of a license who is guilty of unprofessional conduct, including the following:

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

[¶] ... [¶]

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

[¶] ... [¶]

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.

3. Business and Professions Code section 4060 provides: "No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, ..." (See also Health & Saf. Code, § 11357; Veh. Code, § 23222.)

4. Cause to deny respondent's Application exists under Business and Professions Code sections 480, subdivision (a)(1) and (3); 4300, subdivision (c); and 4301, subdivision (l), by reason of the matters set forth in Findings 4 and 5. Respondent was convicted of criminal offenses that are substantially related to the qualifications, functions and duties of a licensed pharmacy technician.

5. Cause to deny respondent's Application exists under Business and Professions Code sections 480, subdivisions (a)(1), (2) and (3); 4300, subdivision (c); and 4301, subdivision (f), by reason of the matters set forth in Finding 4 and 5. Respondent engaged in acts involving moral turpitude, dishonesty, fraud or deceit.

6. Cause to deny respondent's Application exists under Business and Professions Code sections 480, subdivision (a)(3), and 4301, subdivision (j). Respondent possessed a controlled substance in violation of Business and Professions Code section 4060. (Findings 5a and 8.) Unprofessional conduct includes the violation of any of the statutes of this state or of the United States regulating controlled substances and dangerous drugs. (Bus. & Prof. Code, § 4301, subd. (j).)

7. The matters set forth in Findings 6 through 10 were considered in making the following order. It would not be contrary to the public interest, health or safety to issue respondent a probationary license at this time. Respondent should be placed on probation for five years with special conditions including requirements that he abstain from use of alcohol and controlled substances, and that he be subject to random drug screening.

### ORDER

The application of Gregory Lee Rand for Registration as a Pharmacy Technician is granted, and then immediately revoked. However, the revocation is stayed, and respondent is placed on probation for five (5) years upon the following terms and conditions:

1. Abstain from Drugs and Alcohol Use. Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the Board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that he is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.
2. Random Drug Screening. Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the Board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the Board or its designee. At all times respondent shall fully cooperate with the Board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or its designee may direct. Failure to timely submit to testing as



directed shall be considered a violation of probation. Upon request of the Board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the Board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of or any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

3. Work Site Monitor. Within ten (10) days of the effective date of this decision, respondent shall identify a work site monitor, for prior approval by the Board, who shall be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the Board quarterly. Should the designated work site monitor determine at any time during the probationary period that respondent has not maintained sobriety, he or she shall notify the Board immediately, either orally or in writing as directed. Should respondent change employment, a new work site monitor must be designated, for prior approval by the Board, within ten (10) days of commencing new employment. Failure to identify an acceptable initial or replacement work site monitor, or to ensure quarterly reports are submitted to the Board, shall be considered a violation of probation.

4. Obey All Laws. Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence: (1) an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws; (2) a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment; (3) a conviction of any crime; and (4) discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

5. Report to the Board. Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.
6. Interview with the Board. Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear at two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.
7. Cooperate with Board Staff. Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.
8. Notice to Employers. During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 4289

(OAH Case No. 2012100928) and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 4289 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 4289 in advance of respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 4289 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the Board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is considered an employee, independent contractor or volunteer.

9. Probation Monitoring Costs. Respondent shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

10. Status of License. Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

11. License Surrender While on Probation/Suspension. Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his pharmacy technician license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish his pharmacy technician license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

12. Notification of a Change in Name, Residence Address, Mailing Address or Employment. Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number.

Failure to timely notify the Board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

13. Tolling of Probation. Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for the minimum of hours per calendar month designated by the Board. Any month during which this minimum is not met shall toll the period

of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for the designated minimum hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.


"Cessation of work" means calendar month during which respondent is not working for at least the designated minimum hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least the designated minimum hours as a pharmacy technician as defined by Business and Professions Code section 4115.

14. Violation of Probation. If respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

15. Completion of Probation. Upon written notice by the Board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

DATED: July 3, 2013

  
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JONATHAN LEW  
Administrative Law Judge  
Office of Administrative Hearings

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8  
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. 4289

13 **GREGORY LEE RAND**  
14 **P.O. Box 2304**  
**North Highlands, California 95660**

**STATEMENT OF ISSUES**

15 Respondent.

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, Department of Consumer Affairs.  
21 2. On or about August 1, 2011, the Board of Pharmacy, Department of Consumer  
22 Affairs received an Application for Registration as a Pharmacy Technician (Application) from  
23 Gregory Lee Rand (Respondent). On or about July 28, 2011, Respondent certified under penalty  
24 of perjury to the truthfulness of all statements, answers, and representations in the application.  
25 The Board denied the Application on December 20, 2011.

26 ///

27 ///

JURISDICTION

1  
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.    Code section 4300, in pertinent part, states:

6                   (a) Every license issued may be suspended or revoked.

7                   (b) The board shall discipline the holder of any license issued by the board,  
8 whose default has been entered or whose case has been heard by the board and found  
9 guilty, by any of the following methods:

- 10                   (1) Suspending judgment.  
11                   (2) Placing him or her upon probation.  
12                   (3) Suspending his or her right to practice for a period not exceeding one year.  
13                   (4) Revoking his or her license.  
14                   (5) Taking any other action in relation to disciplining him or her as the board in  
15 its discretion may deem proper.

16                   (c) The board may refuse a license to any applicant guilty of unprofessional  
17 conduct. The board may, in its sole discretion, issue a probationary license to any  
18 applicant for a license who is guilty of unprofessional conduct and who has met all  
19 other requirements for licensure. The board may issue the license subject to any  
20 terms or conditions not contrary to public policy, including, but not limited to, the  
21 following:

- 22                   (1) Medical or psychiatric evaluation.  
23                   (2) Continuing medical or psychiatric treatment.  
24                   (3) Restriction of type or circumstances of practice.  
25                   (4) Continuing participation in a board-approved rehabilitation program.  
26                   (5) Abstention from the use of alcohol or drugs.  
27                   (6) Random fluid testing for alcohol or drugs.  
28                   (7) Compliance with laws and regulations governing the practice of pharmacy.

(d) The board may initiate disciplinary proceedings to revoke or suspend any  
probationary certificate of licensure for any violation of the terms and conditions of  
probation. Upon satisfactory completion of probation, the board shall convert the  
probationary certificate to a regular certificate, free of conditions.

(e) The proceedings under this article shall be conducted in accordance with  
Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the  
Government Code, and the board shall have all the powers granted therein. The  
action shall be final, except that the propriety of the action is subject to review by the  
superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

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5. Code section 4301, in pertinent part, 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:

....

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

....

(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.

....

6. Code section 480, in pertinent part, states:

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

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code.

1 (2) Done any act involving dishonesty, fraud or deceit with the intent to  
2 substantially benefit himself or another, or substantially injure another; or

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

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

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

11 7. California Code of Regulations, title 16, section 1770, states:

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

19 8. Section 125.3 of the Code states, in pertinent part, that the Board may request the  
20 administrative law judge to direct a licentiate found to have committed a violation or violations of  
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
22 enforcement of the case.

#### 23 FIRST CAUSE FOR DENIAL OF APPLICATION

##### 24 (Criminal Conviction)

25 9. Respondent's application is subject to denial under Code sections 480, subs. (a)(1)  
26 and (a)(3); 4300, subd. (c); and 4301, subd. (l) in that Respondent has been convicted of the  
27 following crimes that are substantially related to the qualifications, functions, and duties of a  
28 licensed pharmacy technician:

a. On or about April 4, 2006, in a criminal proceeding entitled *People v. Gregory Rand*  
in Sacramento County Superior Court, Case Number 06M02813, Respondent was convicted by  
plea of nolo contendere of violating Penal Code section 647(b) (prostitution), a misdemeanor.

1 The circumstances are that on or about February 22, 2006, Respondent solicited Officer J.  
2 Mezzanares of the Sacramento Police Department to engage in an act of prostitution.

3 b. On or about May 6, 2002, in a criminal proceeding entitled *People v. Gregory Lee*  
4 *Rand, Sr.* in Sacramento County Superior Court, Case Number 02T01751, Respondent was  
5 convicted by plea of nolo contendere of violating Vehicle Code section 23152(a) (driving while  
6 under the influence of alcohol), a misdemeanor. The circumstances are that on or about April 4,  
7 2002, Respondent drove a motor vehicle while having a blood alcohol level of 0.10%.

8 c. On or about May 28, 1998, in a criminal proceeding entitled *People v. Gregory Lee*  
9 *Rand, Sr.* in Sacramento County Superior Court, Case Number 98M06693, Respondent was  
10 convicted by plea of nolo contendere of violating Penal Code section 647(b) (prostitution), a  
11 misdemeanor. The circumstances are that on or about May 8, 1998, Respondent solicited a  
12 woman to engage in an act of prostitution.

13 d. On or about February 2, 1984, in a criminal proceeding entitled *The State of Ohio v.*  
14 *Gregory Rand* in the Court of Common Pleas, State of Ohio, Hamilton County, Case Number  
15 B834294, Respondent was convicted by a verdict of guilty of violating Section 2911.02 of the  
16 Ohio Revised Code (robbery), a felony. The circumstances are that on or about November 16,  
17 1983, Respondent stole retail merchandise and in fleeing immediately thereafter used, or  
18 threatened to immediately use force against Martin Scheff. Respondent was sentenced to a  
19 minimum term of eight years and a maximum term of fifteen years in the Ohio Penitentiary,  
20 Columbus, Ohio.

21 e. On or about February 1, 1982, in a criminal proceeding entitled *The State of Ohio v.*  
22 *Gregory Lee Rand* in the Court of Common Pleas, State of Ohio, Hamilton County, Case Number  
23 B814763, Respondent was convicted by plea of no contest of violating Section 2911.02 of the  
24 Ohio Revised Code (robbery), a felony. The circumstances are that on or about November 4,  
25 1981, Respondent stole personal property and in fleeing immediately thereafter used, or  
26 threatened to immediately use force against Janice R. Ayers. Respondent was sentenced to a  
27 minimum term of two years and a maximum term of fifteen years in the Ohio State Reformatory,  
28 Mansfield, Ohio.

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SECOND CAUSE FOR DENIAL OF APPLICATION

(Act involving Moral Turpitude, Dishonesty, Fraud or Deceit)

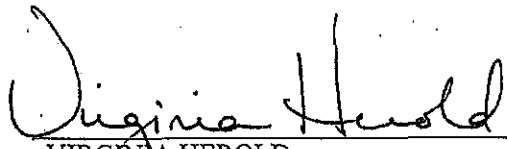
10. Respondent's application is subject to denial under Code sections 480, subds. (a)(1), (a)(2) and (a)(3); 4300, subd. (c); and 4301, subd. (h) in that Respondent engaged in acts involving moral turpitude, dishonesty, fraud or deceit. The circumstances are detailed above in paragraph 9.

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 Gregory Lee Rand for Registration as a Pharmacy Technician; and,
2. Taking such other and further action as deemed necessary and proper.

DATED: 5/28/12



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

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