

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

In the Matter of the Statement of Issues Against:

MARY NOONAN

Pharmacy Technician Registration Applicant

Respondent.

Case No. 4421

OAH No. 2014050564

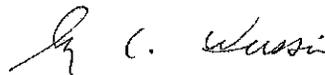
DECISION AND ORDER

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 January 28, 2015.

It is so ORDERED on December 29, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

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
of:

MARY DOREEN NOONAN,

Respondent.

Case No. 4421

OAH No. 2014050564

PROPOSED DECISION

On November 5, 2014, Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, heard this matter in Los Angeles. Complainant was represented by Antonio Lopez, Jr., Deputy Attorney General. Respondent Mary Doreen Noonan was present and represented herself.

During the hearing, complainant presented documentary evidence (Exhs. 1 – 3), which was admitted into evidence, and the testimony of Inspector Valerie Sakamura. Respondent testified and presented documentary evidence (Exhs. A – Q). The Administrative Law Judge hereby admits respondent's exhibits into evidence, pursuant to Government Code section 11513, subdivision (d).

Oral and documentary evidence having been received and argument heard, the Administrative Law Judge submitted this matter for decision on November 5, 2014, and finds as follows:

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on April 19, 2013, the Statement of Issues, Case Number 4421, was made and filed by complainant Virginia Herold in her official capacity as Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California (Board).
2. On or about January 17, 2012, the Board received an application for registration as a pharmacy technician from Mary Doreen Noonan (respondent). She certified under penalty of perjury to the truthfulness of all of her statements, answers,

and representations in said application. In response to a query in the application, respondent disclosed that she has the criminal conviction described below. Respondent has not been issued a registration as a pharmacy technician and her application remains pending.

3. On or about July 3, 2012, the Board notified respondent that her application for registration as a pharmacy technician was being denied due to her criminal conviction. Respondent appealed the denial of her application. The Board issued the Statement of Issues and respondent filed a Notice of Defense, acknowledging receipt of the Statement of Issues and requesting a hearing to allow her to prove that she is entitled to the registration. This matter ensued.

4. (A) Respondent is a certified nurse assistant (CNA). She holds a nurse assistant certification that was issued by the Department of Public Health in January 2000. Prior to 2000, she lived in Texas for several years and worked as a CNA in that state. Respondent is also certified to perform medical billing and to complete medical transactions. She is currently employed as a CNA at Arcadia Health Care Center, a skilled nursing facility.

(B) On February 1, 2011, respondent enrolled at California Preparatory College in Alhambra as a pharmacology student. In November 2011, respondent graduated after she satisfactorily completed the eight-month or 240-hour curriculum and educational requirements for issuance of a pharmacy technician registration. She completed a pharmacy technician internship at Walgreens pharmacy in Arcadia. Respondent then applied for issuance of a pharmacy technician registration.

Respondent's Conviction

5. (A) On April 10, 2007, before the Superior Court of California, County of Los Angeles, West Covina Courthouse, in *People v. Mary Doreen Noonan*, case number 7JB03178, respondent was convicted on her pleas of guilty of making a threat to commit a crime which could result in the death or great bodily injury of another person, in violation of Penal Code section 422, and possessing an assault weapon, in violation of Penal Code 12280, subdivision (b), both misdemeanors and crimes involving moral turpitude.

(B) Based on her plea of guilty to making criminal threats, the court suspended the imposition of sentence and placed respondent on summary probation for three years on condition, in part, that she serve 60 days in the Los Angeles County Jail with credit for four days served, pay an assessment and restitution fine totaling \$120, obey all laws and orders of the court, submit to search or seizure at any time by any law enforcement or probation officer with or without a warrant, enroll in and complete six months of anger management counseling, and stay away from the victim

S.S.¹ The court issued a protective order on behalf of the victim and ordered that the weapon used by respondent in her crimes be destroyed by the law enforcement agency. Based on her plea of guilty to possessing an assault weapon, the court suspended the imposition of sentence and placed respondent on summary probation for three years on condition that she serve 60 days in the Los Angeles County Jail with credit for four days served. The court ordered that respondent serve the jail sentences concurrently.

(C) On April 10, 2007, respondent was remanded to the custody of the Los Angeles Sheriff's Department to begin serving her concurrent jail sentences. On May 31, 2007, respondent failed to appear in court to show proof of her enrollment in anger management counseling as ordered by the court. The court revoked her probation and issued a bench warrant for her arrest. On June 6, 2007, respondent appeared in court. As a result, the court reinstated her probation, recalled the bench warrant, and continued her on the same terms and conditions of probation except that she was ordered to appear at the next court date with proof of having enrolled in anger management counseling. On September 5, 2007, respondent presented the court with a progress report from her anger management counseling sessions. On December 17, 2007, respondent filed proof of completion of the six months of anger management counseling. On April 9, 2008, respondent paid \$120 in satisfaction of the assessment and restitution fines ordered by the court.

6. (A) The facts and circumstances of respondent's conviction are that, at approximately 9:00 p.m., on April 7, 2007, respondent walked out of her Covina residence to a nearby neighbor's home. The neighbor S.S. was drinking alcohol outside his home. He and his sister were hosting a family gathering. Respondent was upset and crying. She also appeared to be intoxicated. She told S.S. that she had been assaulted by her boyfriend. Shortly, respondent asked S.S. if he could walk with her to her residence because she was afraid that her boyfriend might return. S.S. agreed and escorted respondent back to her residence to make sure that she would be safe.

(B) Once inside her residence, respondent started talking incoherently. S.S. told her that he was going to leave and return to his family party. Suddenly, respondent became angry at S.S. and accused him of being just like her boyfriend. S.S. told respondent to calm down. Thereupon, respondent retrieved an assault rifle from a closet, pointed the weapon at S.S., and stated, "I'm going to shoot you." S.S. began to fear for his life. He told respondent to point the rifle down to the floor and pleaded with her not to shoot him. Respondent continued to point the assault rifle at S.S. and added, "I'm going to kill you." In response, S.S. grabbed the rifle from respondent. She stated she was going to get the "real thing" and took out a magazine of ammunition from a dresser drawer. S.S. threw the assault rifle down and hurriedly left respondent's residence. He ran to his home. When he looked back, S.S. saw

¹ Initials are used to protect the victim's privacy.

respondent following him. He thought she might be carrying the assault rifle. S.S. entered his home, locked the door, and told his family members that respondent was chasing him and carrying a machine gun. Respondent began pounding on the door to S.S.'s home and asked to speak with S.S. Family members dropped to the floor and S.S. called the police.

(C) Several officers from the Covina Police Department responded to S.S.'s house in reference to an emergency call reporting a female at the front door with a machine gun. Respondent was present when officers arrived and was detained after she ran from S.S.'s house. She told the officers that the assault rifle was at her residence. The officers found the assault rifle and an ammunition magazine on a bed inside respondent's home and a rifle case in a shed. The assault rifle was not loaded. Respondent was arrested and transported to the Covina Police Department.

(D) At the police station, respondent was incoherent and found to be intoxicated; she spoke about committing suicide. She was taken to a hospital. After respondent became sober, an officer questioned her. Respondent admitted that she had been drinking. She claimed that she had a fight with her boyfriend earlier in the evening and that he had hurt her left arm on previous occasions. The officer did not observe any marks or bruises on her left arm. She asserted that her boyfriend had burned her stomach with a cigarette. The officer saw a red abrasion on respondent's stomach which did not appear to be a burn from a cigarette. When asked about the abrasion, respondent refused to say anything else about it and replied she was afraid of her boyfriend. She added that she was a methamphetamine addict and had been depressed. She indicated she had recently tried to kill herself by cutting her wrists. The officer observed marks on respondent's left wrist but the marks did not appear to be recent. When questioned about the incident with S.S., respondent denied pointing the assault rifle at S.S. and denied that any incident occurred at her residence.

7. A registered pharmacy technician is authorized to work in different pharmaceutical settings, including retail, hospital, and closed door pharmacies. In these settings, a registered pharmacy technician is required to order, stock, and dispense medications, call physicians' offices for prescriptions and refills of medications, take prescriptions from customers, and make, formulate, compound, and package medications. A registered pharmacy technician also has access to private or confidential information of patients and their medical histories and is required to perform his or her duties in an honest and law-abiding manner. At all times, a pharmacy technician must also be able to control his or her emotions and maintain a professional demeanor when dealing with the public.

8. Based on Findings 5 – 7 above, respondent's crimes of threatening to commit a crime that will result in death or great bodily injury to another and possession of an assault weapon are substantially related to the qualifications, functions, and duties of a registered pharmacy technician, within the meaning of California Code of Regulations, title 16, section 1770. Her acts and crimes

demonstrated a lack of judgment and self-control and a propensity to commit violence and to harm others. As such, respondent's acts and crimes evidenced to a substantial degree a present or potential unfitness to perform the functions of a registered pharmacy technician in a manner consistent with the public health, safety, or welfare.

9. After she was convicted and served her jail sentence, respondent entered into anger management counseling with a physician-therapist in Arcadia. She found the counseling sessions to be helpful. She learned how to control her anger and gained an understanding about her emotional turmoil and the abusive relationship that she had with her boyfriend. Respondent also participated in meetings of Alcoholics Anonymous. On or about April 10, 2010, respondent completed the three-year term of her summary probation for her crimes. On February 4, 2013, the court granted respondent's petition under Penal Code section 1203.4 and expunged her conviction for making criminal threats and possessing an assault weapon.

10. From 2004 through 2006, respondent worked as a CNA at Arcadia Health Care Center. From in or about 2005 through 2007, she worked as a CNA at Community Care Center, a locked psychiatric facility in Duarte. Respondent returned to work at Arcadia Health Care Center in 2008 and has remained there since that time.

11. (A) In support of her application for registration as a pharmacy technician, respondent presented certificates and letters of reference from her nursing supervisors and colleagues at Community Care Center and Arcadia Health Care Center and from friends and family. She obtained many of the letters in or about 2012 for purposes of administrative inquiries related to her nurse assistant certificate and ability to work in a licensed community care facility following her conviction. The content of the certificates and letters are summarized below.

(B) On April 5, 2011, and November 2, 2011, respondent received certificates from California Preparatory College for completing the courses of study for pharmacology and pharmacy technician, respectively. An assistant director at California Preparatory College wrote a letter in support of respondent's registration application, indicating that respondent was an excellent student and has a loving support group to help her to reach her professional potential. Respondent's mother was a retired registered nurse and her deceased father was a physician.

(C) In an undated letter, Arayanda Hagins, a supervisor at Community Care Center, stated that respondent had been working at the psychiatric facility for six months and had shown excellent nursing skills and moral character. Hagins indicated that the facility would miss respondent if she could not work there any longer. Hagins attached a letter from a nursing student who wrote that respondent was professional and kind in handling three incidents at the facility involving clients.

(D) On November 2010, the San Gabriel Valley CNA Awards Committee awarded respondent a certificate of appreciation in recognition of her care

of patients at Alhambra Health Care Center. Her supervisor there has written that respondent is a reliable and compassionate nurse assistant who has received compliments from patients' family members. A charge nurse at the skilled nursing facility wrote that respondent has good character and cares for elderly patients in a compassionate and patient manner.

(E) In an undated, handwritten letter, respondent's older brother stated that she has made positive changes in her life. In an undated letter, Mary M. Noonan, respondent's mother, wrote that her daughter is a dedicated and hard-working CNA who has been working in the nursing field for 13 years. Her mother indicated that respondent is back with her family after being out of their lives for a period of time. She stated that respondent's certification as a nurse assistant is important for her daughter.

12. Respondent is single. She divorced her husband in 2004. She has a sixteen-year-old daughter who lives with her father, and a twenty-six-year-old daughter, who lives in Waco, Texas. Respondent is also a grandmother. She has no other convictions.

13. (A) Respondent does not own any firearms. She bought the assault rifle in Victorville in 1999 for her husband. However, she provided inconsistent accounts about how she obtained possession of the assault rifle after her divorce. Respondent initially testified that she "inherited" the weapon through her divorce proceedings. She then testified that, because she was not going to receive any alimony from her ex-husband, she insisted on keeping the assault rifle so that she could sell it and receive some money for it. However, respondent did not ever sell the weapon and used it to commit her crime in 2007.

(B) Respondent was not fully candid about the reasons why she wanted to obtain issuance of a pharmacy technician registration when she is already working as a CNA. She stated that she finds the work of a pharmacy technician to be interesting and believes that jobs in the pharmacy industry are growing. Respondent testified that she is concerned that she may not always be able to perform the physical duties of a CNA and wants other alternatives for work. However, respondent admitted at the conclusion of the hearing that she has already given notice to Arcadia Health Care Center and is quitting her CNA job next week. She plans on moving to Texas to live with her daughter. Respondent wants a probationary registration to work as a pharmacy technician.

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Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds exist to deny respondent's application for registration as a pharmacy technician pursuant to Business and Professions Code sections 480, subdivision (a)(1), in that respondent was convicted of crimes, based on Findings 5 – 6 above.

2. Grounds exist to deny respondent's application for registration as a pharmacy technician registration pursuant to Business and Professions Code sections 480, subdivision (a)(3), and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, in that respondent, by having been convicted of crimes substantially related to the qualifications, functions, and duties of a registered pharmacy technician, committed acts that, if done by a Board licensee, constituted grounds for suspension or revocation of the license, based on Findings 5 – 8 above.

3. Grounds exist to deny respondent's application for registration as a pharmacy technician registration pursuant to Business and Professions Code section 480, subdivision (a)(3), and 4301, subdivision (f), in conjunction with California Code of Regulations, title 16, section 1770, in that respondent, by having been convicted of making criminal threats with use of an assault weapon, which is a crime and act involving moral turpitude and substantially related to the qualifications, functions, and duties of a registered pharmacy technician, committed an act that, if done by a Board licensee, constituted grounds for suspension or revocation of the license, based on Findings 5 – 8 above.

4. Discussion—In this matter, respondent was convicted of the serious offense of threatening to commit a crime which will result in death or great bodily injury to another person and possessing an assault weapon which she used to threaten the victim. The seriousness of the crimes is reflected not only by the underlying facts and circumstances but also by the 60-day jail sentences meted out by the court. That respondent was intoxicated, used an assault weapon, and threatened a neighbor who was trying to help her, constituted aggravating factors surrounding her crimes.

Respondent has submitted evidence of her rehabilitation. She successfully completed probation for her crimes and has had her conviction expunged by the court. She has no other convictions and has been certified and performed well as a nurse assistant for 14 years. However, it cannot be found that respondent is rehabilitated from her conviction and crimes, based on Finding 9 – 13 above. First, respondent did not submit any recent letters of reference to demonstrate her good character and abilities to perform the functions or duties of a pharmacy technician.

Except for the letter from California Preparatory College, all of the letters were obtained by respondent two to four years ago in connection with proceedings regarding her nurse assistant certification and ability to work in a licensed community care facility. Second, respondent's crimes involved alcohol and/or drugs. When she was arrested, respondent was intoxicated from alcohol and she admitted to being addicted to methamphetamine. While she attended meetings of Alcoholics Anonymous while on probation, respondent did not show that she is currently participating in any ongoing program of alcohol or drug counseling. Third, respondent was not completely candid as to how she gained possession of the assault weapon from her ex-husband or that she was quitting her job as a CNA and leaving the state. Respondent's failure to be candid during the hearing has a strong tendency in reason to show that she lacks the qualities of honesty and integrity expected of a Board registrant.

Based on the evidence in this matter, including the seriousness of respondent's crimes and her failure to demonstrate her rehabilitation, and considering the Board's Disciplinary Guidelines (Rev. 10/2007) as well, denial of respondent's application for registration as a pharmacy technician is appropriate for the protection of the public health, safety, and welfare.

* * * * *

WHEREFORE, the following Order is hereby made:

ORDER

The application for registration as a pharmacy technician submitted by respondent Mary Doreen Noonan is denied, based on Conclusions of Law 1 – 4, jointly. The determination of the Board of Pharmacy to deny respondent's application is sustained.

Dated: December 1, 2014


Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 ANTONIO LOPEZ, JR.
Deputy Attorney General
4 State Bar No. 206387
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2536
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Statement of Issues
12 Against:

Case No. 4421

13 **MARY DOREEN NOONAN**

STATEMENT OF ISSUES

14 Respondent.

15 Complainant alleges:

16 **PARTIES**

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

19 2. On or about January 17, 2012, the Board of Pharmacy (Board) received an
20 application for Registration as a Pharmacy Technician from Mary Doreen Noonan (Respondent).
21 On or about January 10, 2012, Mary Doreen Noonan certified under penalty of perjury to the
22 truthfulness of all statements, answers, and representations in the application. The Board denied
23 the application on July 3, 2012.

24 **JURISDICTION**

25 3. This Statement of Issues is brought before the Board under the authority of the
26 following laws. All section references are to the Business and Professions Code unless otherwise
27 indicated.

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1 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
2 made suspending the imposition of sentence, irrespective of a subsequent order under the
3 provisions of Section 1203.4 of the Penal Code."

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

6 7. Section 4301 states, in pertinent part:

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

10

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

14

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

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

4
5 "(p) Actions or conduct that would have warranted denial of a license."

6 **REGULATORY PROVISIONS**

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

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

14 **FIRST CAUSE FOR DENIAL OF APPLICATION**

15 **(Conviction of a Crime)**

16 9. Respondent's application is subject to denial under section 480, subdivision (a)(1), in
17 that Respondent was convicted of a crime. On or about April 10, 2007, after pleading guilty,
18 Respondent was convicted of one misdemeanor count of violating Penal Code section 422
19 [threaten with intent to terrorize] and one count of violating Penal Code section 12280,
20 subdivision (b) [posses any assault weapon] in the criminal proceeding entitled *The People of the*
21 *State of California v. Mary Doreen Noonan* (Super. Ct. Los Angeles County, 1997, No.
22 7JB03178). The Court sentenced Respondent to serve 60 days in Los Angeles County Jail and
23 placed her on 3 years probation, with terms and conditions. The circumstances surrounding the
24 conviction are that on or about April 7, 2007, Respondent became upset at S.S., pulled out an
25 AK-47 type assault rifle, pointed it at him, and stated, "I'm going to shoot you." S.S. managed to
26 take the assault rifle away from Respondent and fled Respondent's house leaving it behind.
27 Respondent chased him down the street to his sister's house where she pounded on the door
28 demanding to enter and asking for S.S. The Covina Police Department Officers detained

1 Respondent outside of the residence. When asked if she owned any weapons she stated, "I have a
2 Mack .90 rifle that I don't want anymore." The officers recovered the assault rifle from
3 Respondent's residence. Respondent was subsequently arrested for terrorist threats and
4 brandishing a firearm in a threatening matter.

5 **SECOND CAUSE FOR DENIAL OF APPLICATION**

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

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

11 a. Respondent was convicted of crimes substantially related to the qualifications,
12 functions, or duties of a pharmacy technician which to a substantial degree evidence her present
13 or potential unfitness to perform the functions authorized by her license in a manner consistent
14 with the public health, safety, or welfare, in violation of sections 4301, subdivision (l), and 490,
15 in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,
16 and by this reference incorporates, the allegations set forth above in paragraph 9, as though set
17 forth fully.

18 b. On or about April 7, 2007, Respondent committed acts involving moral turpitude,
19 dishonesty, fraud, or deceit in violation of section 4301, subdivision (f). Complainant refers to,
20 and by this reference incorporates, the allegations set forth above in paragraph 9, as though set
21 forth fully.

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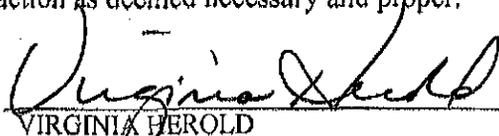
PRAYER

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

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

DATED:

4/19/13



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

LA2012507642