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

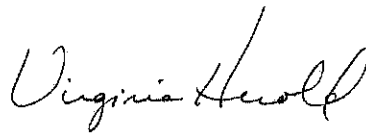
In the Matter of the Statement of Issues
Against:
MICHAEL JOVANNY CARABES
**Pharmacy Technician Registration
Applicant**

Respondent.

Case No. 5375

**WITHDRAWAL OF STATEMENT OF
ISSUES**

The Statement of Issues No. 5375 against Michael Jovanny Carabes (Respondent) is withdrawn without prejudice. Respondent has withdrawn the request for a hearing regarding the denial of the application for a pharmacy technician registration. The denial of the application is affirmed.



DATED: 9/14/2015

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

1 KAMALA D. HARRIS
Attorney General of California
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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 First Amended Statement
12 of Issues Against:

Case No. 5375

13 **MICHAEL JOVANNY CARABES**

**FIRST AMENDED STATEMENT OF
ISSUES**

14 **Pharmacy Technician Registration**
15 **Applicant**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about December 23, 2013, the Board of Pharmacy, Department of Consumer
23 Affairs received an application for a Pharmacy Technician Registration from Michael Jovanny
24 Carabes (Respondent). On or about December 16, 2013, Michael Jovanny Carabes certified
25 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
26 application. The Board denied the application on October 13, 2014.

27 ///

28 ///

1 7. Section 480¹ of the Code states:

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

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

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

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

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

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

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

28 8. Section 482 of the Code states:

 Each board under the provisions of this code shall develop criteria to evaluate the
 rehabilitation of a person when:

 (a) Considering the denial of a license by the board under Section 480; or

 (b) Considering suspension or revocation of a license under Section 490.

¹ This First Amended Statement of Issues is based on Code section 480 as it was in effect at the time of the denial. Section 480 was amended effective January 1, 2015, with the addition of the following language: "(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal."

1 Each board shall take into account all competent evidence of rehabilitation
2 furnished by the applicant or licensee.

3 9. Section 4301 of the Code states:

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

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

13 (q) Engaging in any conduct that subverts or attempts to subvert an
14 investigation of the board.

15 REGULATORY PROVISIONS

16 10. California Code of Regulations, title 16, section 1769 states:

17 (a) When considering the denial of a facility or personal license under Section 480
18 of the Business and Professions Code, the board, in evaluating the rehabilitation of the
19 applicant and his present eligibility for licensing or registration, will consider the
20 following criteria:

21 (1) The nature and severity of the act(s) or offense(s) under consideration as
22 grounds for denial.

23 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
24 under consideration as grounds for denial under Section 480 of the Business and
25 Professions Code.

26 (3) The time that has elapsed since commission of the act(s) or crime(s)
27 referred to in subdivision (1) or (2).

28 (4) Whether the applicant has complied with any terms of parole, probation,
restitution or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

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

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

6 DRUGS

7 12. Delta-9-tetrahydrocannabinol (Delta-9-THC), and its major metabolite, 11-
8 Carboxy-Delta-9-tetrahydrocannabinol, is the primary psychoactive ingredient in marijuana.
9 Marijuana is a Schedule I controlled substance as designated by Health and Safety Code section
10 11054(d)(13), and is a dangerous drug pursuant to Business & Professions Code section 4022.

11 13. Clonazepam is a Schedule IV controlled substance as designated by Health and
12 Safety Code section 11057(d)(7), and is a dangerous drug pursuant to Business and Professions
13 Code section 4022.

14 37. Lorazepam is a Schedule IV controlled substance as designated by Health and
15 Safety Code section 11057(d)(16), and is a dangerous drug pursuant to Business and Professions
16 Code section 4022.

17 FIRST CAUSE FOR DENIAL OF APPLICATION

18 (Dangerous Use of Controlled Substances on June 19, 2014)

19 14. Respondent's application for registration as a pharmacy technician is subject to denial
20 under section 480(a)(3)(A) of the Code for unprofessional conduct in that he operated a motor
21 vehicle while impaired by controlled substances on June 19, 2014. Said conduct would be a
22 ground for discipline under section 4301(h) of the Code for a licensed pharmacy technician. The
23 circumstances are as follows:

24 a. On the afternoon of June 19, 2014, deputies with the Riverside County Sheriff's
25 Department were traveling on the I-91 freeway in the number one lane. Respondent was driving
26 in the number two lane, and slowly drifted into the number one lane, nearly colliding with the
27 deputies' vehicle. Believing he may be under the influence, the deputies conducted a traffic stop.
28 Upon contact with Respondent, they immediately noticed Respondent appeared to be too

1 impaired to drive based on his slow motor skills and inability to focus. Respondent appeared
2 confused; he had a dazed expression on his face, and red, glossy eyes. Respondent denied
3 consuming drugs or alcohol. Respondent agreed to perform field sobriety tests, but they were
4 discontinued when Respondent was unable to maintain his balance and nearly fell into traffic.
5 Respondent consented to a search of his vehicle. In the center console of the vehicle, the deputy
6 found a small paper cup containing a small straw and a white chalky substance which
7 subsequently tested positive for three grams of cocaine. Respondent was arrested for driving
8 under the influence of drugs, and possession of cocaine. During booking, Respondent told the
9 deputies that the white powder was his prescribed medication which he crushes, however,
10 Respondent was unable to state what medication he was taking. A blood sample taken from
11 Respondent subsequently tested positive for cannabinoids/THC, Clonazepam, and Lorazepam.

12 b. On August 12, 2014, in a criminal proceeding entitled *People of the State of*
13 *California vs. Michael Carabes*, in Riverside County Superior Court, case number
14 SWM1407220, Respondent was charged with violating Vehicle Code section 23152(e), driving
15 under the influence of a drug, a misdemeanor. That criminal matter is still pending.

16 **SECOND CAUSE FOR DENIAL OF APPLICATION**

17 **(Subverting of an Investigation by the Board)**

18 15. Respondent's application for registration as a pharmacy technician is subject to denial
19 under section 4301 subsection (q) of the Code for unprofessional conduct in that he subverted an
20 investigation of the Board. The circumstances are as follows:

21 a. On or about March 20, 2014, Respondent received a letter from the Board
22 advising him that the Board required information regarding a potential arrest or criminal
23 conviction that occurred while he was serving in the United States Army. Respondent was
24 advised to provide a written explanation and documents regarding his Army arrest/conviction.
25 Despite repeated calls and requests from Board staff the Board never received the required
26 information.

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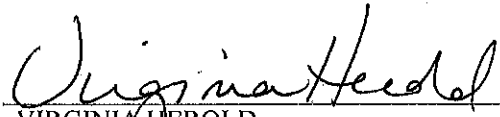
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PRAYER

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

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

DATED: 8/10/15 
VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

SD2014708472

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Attorneys for Complainant

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. 5375

13 **MICHAEL JOVANNY CARABES**

STATEMENT OF ISSUES

14 **Pharmacy Technician Registration**
15 **Applicant**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about December 23, 2013, the Board of Pharmacy, Department of Consumer
23 Affairs received an application for a Pharmacy Technician Registration from Michael Jovanny
24 Carabes (Respondent). On or about December 16, 2013, Michael Jovanny Carabes certified under
25 penalty of perjury to the truthfulness of all statements, answers, and representations in the
26 application. The Board denied the application on October 13, 2014.

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1 **JURISDICTION**

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 references
4 are to the Business and Professions Code (Code) unless otherwise indicated.

5 4. Section 4300(c) of the Code provides, in pertinent part, that the board may refuse a
6 license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion,
7 issue a probationary license to any applicant for a license who is guilty of unprofessional conduct
8 and who has met all other requirements for licensure.

9 **STATUTORY PROVISIONS**

10 5. Section 475 of the Code states:

11 (a) Notwithstanding any other provisions of this code, the provisions of this
12 division shall govern the denial of licenses on the grounds of:

13 (1) Knowingly making a false statement of material fact, or knowingly omitting
14 to state a material fact, in an application for a license.

15 (2) Conviction of a crime.

16 (3) Commission of any act involving dishonesty, fraud or deceit with the intent
17 to substantially benefit himself or another, or substantially injure another.

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

20 (b) Notwithstanding any other provisions of this code, the provisions of this
21 division shall govern the suspension and revocation of licenses on grounds specified in
22 paragraphs (1) and (2) of subdivision (a).

23 (c) A license shall not be denied, suspended, or revoked on the grounds of a lack of
24 good moral character or any similar ground relating to an applicant's character,
25 reputation, personality, or habits.

26 6. Section 477 of the Code states:

27 As used in this division:

28 (a) "Board" includes "bureau," "commission," "committee," "department,"
"division," "examining committee," "program," and "agency."

(b) "License" includes certificate, registration or other means to engage in a
business or profession regulated by this code.

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1 7. Section 480¹ of the Code states:

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

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

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

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

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

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

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

28 8. Section 482 of the Code states:

 Each board under the provisions of this code shall develop criteria to evaluate the
rehabilitation of a person when:

 (a) Considering the denial of a license by the board under Section 480; or

 (b) Considering suspension or revocation of a license under Section 490.

¹ This Statement of Issues is based on Code section 480 as it was in effect at the time of the denial. Section 480 was amended effective January 1, 2015, with the addition of the following language: "(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal."

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Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

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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:

....

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

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REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769 states:

(a) When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

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(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.

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

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7 license or registration in a manner consistent with the public health, safety, or welfare.

8 **DRUGS**

9 12. Delta-9-tetrahydrocannabinol (Delta-9-THC), and its major metabolite, 11-
10 Carboxy-Delta-9-tetrahydrocannabinol, is the primary psychoactive ingredient in marijuana.
11 Marijuana is a Schedule I controlled substance as designated by Health and Safety Code section
12 11054(d)(13), and is a dangerous drug pursuant to Business & Professions Code section 4022.

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17 Safety Code section 11057(d)(16), and is a dangerous drug pursuant to Business and Professions
18 Code section 4022.

19 **CAUSE FOR DENIAL OF APPLICATION**

20 **(Dangerous Use of Controlled Substances on June 19, 2014)**

21 14. Respondent's application for registration as a pharmacy technician is subject to denial
22 under section 480(a)(3)(A) of the Code for unprofessional conduct in that he operated a motor
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Upon contact with Respondent, they immediately noticed Respondent appeared to be too impaired

1 to drive based on his slow motor skills and inability to focus. Respondent appeared confused; he
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4 Respondent was unable to maintain his balance and nearly fell into traffic. Respondent consented
5 to a search of his vehicle. In the center console of the vehicle, the deputy found a small paper cup
6 containing a small straw and a white chalky substance which subsequently tested positive for three
7 grams of cocaine. Respondent was arrested for driving under the influence of drugs, and
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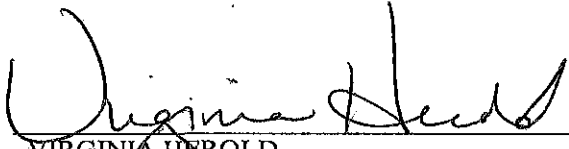
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14 Respondent was charged with violating Vehicle Code section 23152(e), driving under the influence
15 of a drug, a misdemeanor. That criminal matter is still pending.

16 **PRAYER**

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

- 19 1. Denying the application of Michael Jovanny Carabes for a Pharmacy Technician
20 Registration;
21 2. Taking such other and further action as deemed necessary and proper.

22
23 DATED: 6/13/15

24 
25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant

SD2014708472