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*Attorneys for Complainant*

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

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| In the Matter of the Petition to Revoke Probation Against,<br><br>**JERRELL ANDRE SCOTT**<br>**68790 Panorama Drive**<br>**Desert Hot Springs, CA 92240**<br><br>**Pharmacy Technician Registration No. TCH 95574**<br><br>Respondent. | Case No. 4542<br><br>**PETITION TO REVOKE PROBATION** |

Complainant alleges:

**PARTIES**

1. Virginia Herold (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about April 23, 2012, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 95574 to Jerrell Andre Scott (Respondent). Pursuant to Family Code section 17520, Respondent was issued a temporary 30/150 day license. The Pharmacy Technician Registration expired on September 20, 2012, and has not been renewed.

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3. In a disciplinary action entitled "*In the Matter of Statement of Issues Against Jerrell Andre Scott*," Case No. 4000, the Board of Pharmacy issued a decision, effective April 23, 2012, in which Respondent's application for a Pharmacy Technician Registration was granted. A Pharmacy Technician Registration was issued and then immediately revoked. However, the revocation was stayed and Respondent's Pharmacy Technician Registration was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

## JURISDICTION

4. This Petition to Revoke Probation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of Probation Condition number 20, and the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

5. Probation Condition Number 20 (Violation of Probation) states:

> If a 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.

6. Section 4300.1 of the Code states:

> The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

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## FIRST CAUSE TO REVOKE PROBATION

**(Report to the Board)**

7. At all times after the effective date of Respondent's probation, Condition 3 stated:

> 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.

8. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 3, referenced above in that Respondent did not file any quarterly reports.

## SECOND CAUSE TO REVOKE PROBATION

**(Status of License)**

9. At all times after the effective date of Respondent's probation, Condition 8 stated:

> 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.
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> 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.

10. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 8, referenced above, in that he allowed his pharmacy technician registration to expire on September 20, 2012.

## THIRD CAUSE TO REVOKE PROBATION

**(Random Drug Screening)**

11. At all times after the effective date of Respondent's probation, Condition 14 stated:

> 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.

12. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 14, referenced above, in that he failed to make daily check-ins with the contracted drug testing vendor on April 25, 2012 through May 2, 2012, May 5, 2012, July 4, 2012, and July 12, 2012 to the present. Respondent further failed to submit to random drug screening on May 1, 2012, July 12, 2012, July 20, 2102, July 23, 2012, July 31, 2012, August 8, 2012, August 14, 2012, August 22, 2012, August 23, 2012, September 4, 2012, and September 10, 2012.

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## FOURTH CAUSE TO REVOKE PROBATION

**(Attend Substance Abuse Recovery Relapse Prevention and Support Groups)**

13. At all times after the effective date of Respondent's probation, Condition 15 stated:

> Should Respondent test positive for alcohol, dangerous drugs or other controlled substances during a random drug screening, Respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the Board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the Board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

14. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 15, referenced above, in that Respondent failed to submit proof of attendance in a substance abuse recovery group.

## FIFTH CAUSE TO REVOKE PROBATION

**(Community Services Program)**

15. At all times after the effective date of Respondent's probation, Condition 19 stated:

> Within sixty (60) days of the effective date of this decision, Respondent shall submit to the Board or its designee, for prior approval, a community service program in which Respondent shall provide free health-care related services on a regular basis to a community or charitable facility or agency for at least 25 hours per year for the first two years of probation. Within thirty (30) days of Board approval thereof, Respondent shall submit documentation to the Board demonstrating commencement of the community service program. A record of this notification must be provided to the Board upon request. Respondent shall report on progress with the community service program in the quarterly reports. Failure to timely submit, commence, or comply with the program shall be considered a violation of probation.

16. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 19, referenced above, in that he failed to submit a community service program for Board approval.

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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. Revoking the probation that was granted by the Board of Pharmacy in Case No. 4000 and imposing the disciplinary order that was stayed thereby revoking Pharmacy Technician Registration No. TCH 95574 issued to Jerrell Andre Scott;

2. Revoking or suspending Pharmacy Technician Registration No. TCH 95574, issued to Jerrell Andre Scott;

3. Taking such other and further action as deemed necessary and proper.

DATED: 8/8/13

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

SD2013705330

# Exhibit A

**Decision and Order**

**Board of Pharmacy Case No. 4000**

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

| | |
|---|---|
| In the Matter of the Statement of Issues Against:<br><br>**JERRELL ANDRE SCOTT**<br>**68790 Panorama Drive**<br>**Desert Hot Springs, CA 92240**<br><br>Respondent. | Case No. 4000<br><br>OAH NO.: 2011061476 |

## DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on April 23, 2012.

It is so ORDERED on March 23, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
STANLEY C. WEISSER
Board President

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General
State Bar No. 101336
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*Attorneys for Complainant*

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

| | |
|---|---|
| In the Matter of the Statement of Issues Against:<br><br>**JERRELL ANDRE SCOTT**<br>**68790 Panorama Drive**<br>**Desert Hot Springs, CA 92240**<br><br>Respondent. | Case No. 4000<br><br>OAH No. 2011061476<br><br>**STIPULATED SETTLEMENT AND DISCIPLINARY ORDER** |

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

**PARTIES**

1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Amanda Dodds, Senior Legal Analyst.

2. Jerrell Andre Scott (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about August 18, 2009, Respondent filed an application dated August 13, 2009, with the Board of Pharmacy to obtain a Pharmacy Technician Registration.

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## JURISDICTION

4. Statement of Issues No. 4000 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on June 28, 2011. A copy of Statement of Issues No. 4000 is attached as Exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Statement of Issues No. 4000. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

## CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. 4000.

9. Respondent agrees that his Pharmacy Technician Registration is subject to denial and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

## CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may

communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

## DISCIPLINARY ORDER

IT IS HEREBY ORDERED that upon satisfaction of all statutory and regulatory requirements for issuance of a license, a license shall be issued to Respondent Jerrell Andre Scott and immediately revoked; the order of revocation is stayed and Respondent is placed on probation for three (3) years upon the following terms and conditions:

1. **Certification Prior to Resuming Work**

Respondent shall be automatically suspended from working as a pharmacy technician until he is certified as defined by Business and Professions Code section 4202(a)(4) and provides satisfactory proof of certification to the Board. Respondent shall not resume working as a

pharmacy technician until notified by the Board. Failure to achieve certification within one (1) year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the Board.

During suspension, Respondent shall not enter any pharmacy area or any portion of 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.

Subject to the above restrictions, Respondent may continue to own or hold an interest in any licensed premises by the Board 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.

2. **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:

- ☐ 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
- ☐ a plea of guilty or nolo contendre in any state or federal criminal proceeding to any criminal complaint, information or indictment
- ☐ a conviction of any crime
- ☐ 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.

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3. **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.

4. **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.

5. **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.

6. **Notice to Employers**

During the period of probation, Respondent shall notify all present and prospective employers of the decision in case number 4000 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 4000 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 4000 in advance of the 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 has read the decision in case number 4000 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.

7. **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.

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8. **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.

9. **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.

10. **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.

11. **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 a minimum of fifteen (15) hours per calendar month. 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 a minimum of 15 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 fifteen (15) 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 fifteen (15) hours as a pharmacy technician as defined by Business and Professions Code section 4115.

12. **No Ownership of Licensed Premises**

Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm,

partnership, or corporation currently or hereinafter licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the Board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the Board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

13. **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.

14. **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.

15. **Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

Should Respondent test positive for alcohol, dangerous drugs or other controlled substances during a random drug screening, Respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the Board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the Board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

16. **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 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.

17. **Notification of Departure**

Prior to leaving the probationary geographic area designated by the Board or its designee for a period greater than twenty-four (24) hours, Respondent shall notify the Board verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation of probation.

18. **Tolling of Suspension**

During the period of suspension, Respondent shall not leave California for any period exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess of ten (10) days during suspension shall be considered a violation of probation. Moreover, any absence from California during the period of suspension exceeding ten (10) days shall toll the suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days Respondent is absent from California. During any such period of tolling of suspension, Respondent must nonetheless comply with all terms and conditions of probation.

Respondent must notify the Board in writing within ten (10) days of departure, and must further notify the Board in writing within ten (10) days of return. The failure to provide such notification(s) shall constitute a violation of probation. Upon such departure and return, Respondent shall not return to work until notified by the Board that the period of suspension has

been satisfactorily completed.

19. **Community Services Program**

Within sixty (60) days of the effective date of this decision, Respondent shall submit to the Board or its designee, for prior approval, a community service program in which Respondent shall provide free health-care related services on a regular basis to a community or charitable facility or agency for at least 25 hours per year for the first two years of probation. Within thirty (30) days of Board approval thereof, Respondent shall submit documentation to the Board demonstrating commencement of the community service program. A record of this notification must be provided to the Board upon request. Respondent shall report on progress with the community service program in the quarterly reports. Failure to timely submit, commence, or comply with the program shall be considered a violation of probation.

20. **Violation of Probation**

If a 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.

21. **Completion of Probation**

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

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## ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 11/21/2011

JERRELL ANDRE SCOTT
Respondent

## ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: 11/30/2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

AMANDA DODDS
Senior Legal Analyst
*Attorneys for Complainant*

SD2011800074

# Exhibit A

## Statement of Issues No. 4000

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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:<br><br>**JERRELL ANDRE SCOTT**<br>**68790 Panorama Drive**<br>**Desert Hot Springs, CA 92240**<br><br>Respondent. | Case No. 4000<br><br>**STATEMENT OF ISSUES** |

Complainant alleges:

**PARTIES**

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

2. On or about August 18, 2009, the Board of Pharmacy, Department of Consumer Affairs received an application for a Pharmacy Technician Registration from Jerrell Andre Scott (Respondent). On or about August 13, 2009, Jerrell Andre Scott certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on October 18, 2010.

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## JURISDICTION

3. This Statement of Issues is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 4300, subdivision (c) of the Code states, in pertinent part, that the Board may refuse a license to any applicant guilty of unprofessional conduct.

5. Section 475 of the Code states:

> (a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:
>
> (1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.
>
> (2) Conviction of a crime.
>
> (3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.
>
> (4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.
>
> . . . .

## STATUTORY PROVISIONS

6. Section 480 states, in pertinent part:

> (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 that 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 herself or another, or substantially injure another.
>
> (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 or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made. . . .

7. 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.

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

8. Section 4301 of the Code 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:

. . . .

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

. . . .

(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. . . .

## REGULATORY PROVISIONS

9. 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:

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

(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.

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

(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.

. . . .

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

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

**DRUG**

11. Marijuana is a Schedule I controlled substance as designated by Health and Safety Code section 11054, subdivision (d)(13), and is a dangerous drug pursuant to Business & Professions Code section 4022.

**FIRST CAUSE FOR DENIAL OF APPLICATION**

**(June 8, 2005 Criminal Conviction for Selling Marijuana)**

12. Respondent's application for registration as a pharmacy technician is subject to denial under sections 480, subdivision (a)(1) of the Code in that Respondent was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

a. On or about June 8, 2005, in a criminal proceeding entitled *People of the State of California vs. Jerrell Andre Scott*, in San Bernardino County Superior Court, case number FMB007390, Respondent was convicted on his plea of nolo contendere to violating Health and Safety Code section 11360, selling and/or furnishing marijuana, a felony.

b. As a result of the conviction, on or about July 20, 2005, Respondent was sentenced to 120 days in the San Bernardino County Jail, with credit for three days, and he was placed on 36 months supervised probation. Respondent was further ordered to comply with standard felony probation terms, including random controlled substance tests, participation in a counseling program, and submission to a Fourth Amendment waiver. On or about April 27, 2009, the court granted Respondent's motion to reduce the felony conviction to a misdemeanor and probation was terminated. The court set aside the conviction and dismissed the case pursuant to Penal Code sections 1203.4 and 1203.4, subdivision (a).

c. The circumstances that led to the conviction are that Respondent became a subject of an ongoing investigation conducted by the Naval Criminal Investigative Service (NCIS), which targeted military and civilian personnel who were selling illegal drugs to Navy and Marine Corps personnel at Marine Air Ground Task Force Training Command at Twenty-Nine Palms. Respondent admitted to NCIS agents that he sold marijuana on multiple occasions to a sailor he knew as "Justin." The matter was turned over to the San Bernardino County Sheriff's Department and Respondent was subsequently arrested and prosecuted.

**SECOND CAUSE FOR DENIAL OF APPLICATION**

**(Commission of Acts Which if Done by a Licensee Would be Grounds for Suspension or Revocation of License)**

13. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A) of the Code in that he committed acts, that if done by a licensed pharmacy technician, would be grounds for suspension or revocation of the license. The circumstances are as follows:

a. On or about June 8, 2005, as detailed in paragraph 12, above, Respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a licensed pharmacy technician, which is a violation of section 4301, subdivision (l) of the Code for a licensee.

b. On or about June 8, 2005, as detailed in paragraph 12, above, Respondent was convicted of violating Health and Safety Code section 11360, a statute regulating controlled

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substances and dangerous drugs crime, which is a violation of section 4301, subdivision (j) of the Code for a licensee.

**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 Jerrell Andre Scott for a Pharmacy Technician Registration;

2. Taking such other and further action as deemed necessary and proper.

DATED: 6/22/11

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

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