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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 Against:

Case No. 3285

12 **JUSTIN MARVIN MILLER**
1601 Heskett Way, Apt #8
13 Sacramento, Ca 95825

STATEMENT OF ISSUES

14 Respondent.

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16 Complainant alleges:

17 **PARTIES**

18 1. Virginia K. Herold (Complainant) brings this Statement of Issues solely in
19 her official capacity as the Executive Officer of the Board of Pharmacy.

20 2. On or about September 18, 2008, the Board of Pharmacy received an
21 application for Registration as a Pharmacy Technician from Justin Marvin Miller (Respondent).
22 On or about September 16, 2008, Justin Marvin Miller certified under penalty of perjury to the
23 truthfulness of all statements, answers, and representations in the application. The Board denied
24 the application on November 7, 2008.

25 **JURISDICTION**

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

STATUTORY PROVISIONS

1
2 4. Business and Professions Code ("Code") section 480 provides, in pertinent
3 part, that:

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

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

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

15 (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 5. Section 4300 provides:

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

25 (1) Medical or psychiatric evaluation.

26 (2) Continuing medical or psychiatric treatment.

27 (3) Restriction of type or circumstances of practice.

28 (4) Continuing participation in a board-approved rehabilitation program.

(5) Abstention from the use of alcohol or drugs.

(6) Random fluid testing for alcohol or drugs.

(7) Compliance with laws and regulations governing the practice of
pharmacy.

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1 6. Section 4301 provides that the Board shall take action against a
2 holder of a license who is guilty of unprofessional conduct which includes in
pertinent part the following:

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

5
6 (1) The conviction of a crime substantially related to the qualifications,
7 functions, and duties of a licensee under this chapter. The record of conviction of
8 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the
9 United States Code regulating controlled substances or a violation of the statutes
of this state regulating controlled substances or dangerous drugs shall be
10 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. . . . 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.

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12 7. Code section 4307 provides, in pertinent part, that:

13 (a) Any person who has been denied a license . . . shall be prohibited from
14 serving as a manager, administrator, owner, member, officer, director, associate,
or partner of a licensee as follows:

15 (2) Where the license is denied or revoked, the prohibition shall continue
16 until the licence is issued or reinstated.

17 **FIRST CAUSE FOR DENIAL**

18 **(Criminal Conviction)**

19 8. Respondent is subject to denial of his application pursuant to Code section
20 480, subdivision (a)(1), in that on or about May 20, 2002, in the criminal proceeding titled,
21 *People v. Justin Miller* (Super. Ct. Del Norte County, 2002, Case No. CRM 02-9299),
22 Respondent was convicted by the court on his plea of guilty to a violation of Penal Code section
23 261.5 (unlawful sexual intercourse with person under 18), a crime substantially related to the
24 qualifications, functions, and duties of pharmacy technician. The circumstances of the crime are
25 that on or about July 4, 2001, Respondent, who was 17 years old at the time of the incident, had
26 sexual intercourse with a 14 year old girl.

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SECOND CAUSE FOR DENIAL

(Acts That Give Cause for Discipline of a Licensee)

9. Respondent is subject to denial of his application pursuant to Code section 480, subdivision (a)(3)(A), and 4300, subdivision (c), in that Respondent committed acts which, if done by a licentiate, would be grounds for revocation or suspension of their license under Code sections 4301, subdivisions (f) and (l), as set forth in paragraph 8 above.

OTHER MATTERS

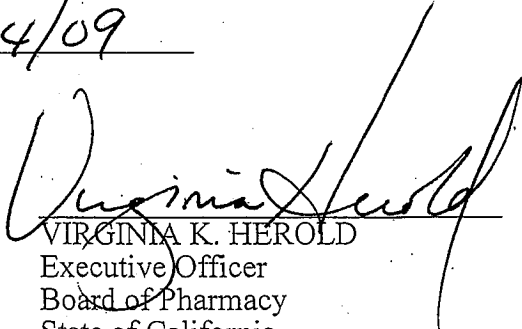
5. Pursuant to Code section 4307, if the application of Respondent for registration as a pharmacy technician is denied, Respondent shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of any licensee.

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 Justin Marvin Miller for Registration as a Pharmacy Technician;
- 2. Prohibiting Justin Marvin Miller from serving as a manager, administrator, owner, member, officer, director, associate, or partner of any licensee; and
- 3. Taking such other and further action as deemed necessary and proper.

DATED: 5/14/09


 VIRGINIA K. HEROLD
 Executive Officer
 Board of Pharmacy
 State of California
 Complainant