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

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

Case No. 3286

13 **MICHELLE DAWN ERICKSON**
14 **a.k.a. MICHELLE DAWN HULL**
15 **1470 N. Roosevelt**
Fresno, California 93728

STATEMENT OF ISSUES

16 Respondent.

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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 April 4, 2008, the Board of Pharmacy, Department of Consumer Affairs
23 received an application for a Pharmacy Technician (Application) from Michelle Dawn Erickson
24 a.k.a. Michelle Dawn Hull (Respondent). On or about April 3, 2008, Respondent 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 November 7, 2008.

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JURISDICTION

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

5 4. Code section 4300, in pertinent part, states:

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

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

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

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

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

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

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

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5. Code section 4301, in pertinent part, states:

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

....

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

....

(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.

....

(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.

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

(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

1 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
2 dismissing the accusation, information, or indictment.

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

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

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

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

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

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

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

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

26 For the purpose of denial, suspension, or revocation of a personal or facility
27 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
28 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.

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

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DRUGS

9. Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2), and is a dangerous drug within the meaning of Code section 4022, in that under federal law it requires a prescription

FIRST CAUSE FOR DENIAL OF APPLICATION

(Criminal Conviction)

10. Respondent's application is subject to denial under Code sections 480, subs. (a)(1) and (a)(3); 4300, subd. (c); 4301, subs. (f), (h), (j), (k) and (l) in that on or about June 5, 2006, in a criminal proceeding entitled People v. Michelle Dawn Hull in Fresno County Superior Court, Case Number F06902673-3, Respondent was convicted by plea of guilty in Health and Safety Code section 11377(a) (possession of a controlled substance), a felony. The circumstances are that on or about April 12, 2006, Respondent was found at her residence in possession of methamphetamine, a controlled substance, and narcotic paraphernalia, namely two plastic crack pipes and one metal crack pipe.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Possession of a Controlled Substance and Narcotic Paraphernalia)

11. Respondent's application is subject to denial under Code sections 480, subd. (a)(3); 4300, subd. (c); 4301, subs. (f), and (h) in that on or about April 12, 2006, Respondent was found at her residence in possession of methamphetamine, a controlled substance, and narcotic paraphernalia, namely two plastic crack pipes and one metal crack pipe.

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:

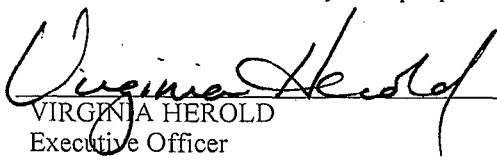
1. Denying the Application of Michelle Dawn Erickson a.k.a. Michelle Dawn Hull for a Pharmacy Technician; and,

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

DATED: 11/17/09



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

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