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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: **ANTHONY KEVIN CROSBY** **2126 Lincoln Avenue** **Richmond, CA 94801** **Applicant for Pharmacy Technician License** Respondent.	Case No. 3383 **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 December 4, 2007, the Board of Pharmacy, Department of Consumer Affairs, received an Application for Registration as a Pharmacy Technician from Anthony Kevin Crosby (Respondent). On or about December 1, 2007, Anthony Kevin Crosby certified under penalty of perjury the truthfulness and accuracy of all statements, answers, and representations in the Application. The Board denied the Application on or about June 3, 2008.

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.

STATUTORY PROVISIONS

4. Section 4300, subdivision (c), of the Code states:

"(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy . . . ."

5. Section 4301 of the Code provides, in pertinent part, that "unprofessional conduct" is defined to include, but not be 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.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

((l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.

6. Section 480 of the Code 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. . . . Any action which a board is permitted to take following the establishment of a conviction may be taken . . . 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 another, or substantially injure another; or

"(3) 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.

"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 . . . [license]."

. . .

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

7. 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."

FACTUAL/PROCEDURAL BACKGROUND

8. On or about September 2, 1988, Respondent was arrested by Benicia Police following his attempt to rent an apartment using another person's name and information, while possessing a loaded concealed firearm. He was subsequently charged, in a case titled *People v. Anthony Kevin Crosby*, Case No. 80144 in Solano County Municipal Court (Vallejo-Benicia Judicial District), with violating (1) Penal Code section 470 (Forgery), (2) Penal Code section 532, subdivision (a) (False Financial Statement), (3) Penal Code section 12025, subdivision (a) (Carrying Concealed Firearm), and (4) Penal Code section 12031, subdivision (a) (Carrying Loaded Firearm in Public), all misdemeanors. On or about September 23, 1988, Respondent pleaded *nolo contendere* to and was convicted of all four (4) misdemeanors. The gun was confiscated, and a fine was imposed.

9. On or about December 7, 1988, Respondent was arrested by Richmond Police after a vehicle in his possession was detained on suspicion of drug activity and was found to contain a firearm. He was subsequently charged, in a case titled *People v. Anthony Kevin Crosby*, Case No. 902140-3 in Contra Costa County Municipal Court (Bay Judicial District), with violating (1) Penal Code section 12025, subdivision (a) (Carrying Concealed Firearm), and (2) Penal Code section 12031, subdivision (a) (Carrying Loaded Firearm in Public), both misdemeanors. On or about May 24, 1990, Respondent was convicted of both charges, and sentenced to 120 days in county jail (or home detention). The sentence was subsequently reduced to 90 days in jail, and was eventually reduced to 4 days in jail. Respondent was also ordered to pay fines and fees.

10. On or about June 30, 1990, Respondent was arrested by Berkeley Police after he and an accomplice broke into an apartment and threatened and assaulted its occupants with a gun and a baseball bat. He was subsequently charged, in a case titled *People v. Anthony Kevin Crosby*, Case No. 103678A in Alameda County Superior Court, with violating (1) Penal Code section 459 (Burglary), (1a) Penal Code section 12022.5 (Use of Firearm in Commission of Felony), (2) Penal Code section 211 (Robbery), (2a) Penal Code section 12022.5 (Use of Firearm in Commission of Felony), (3) Penal Code section 245, subdivision (a)(1) (Assault with Deadly Weapon Other Than Firearm By Means of Force Likely to Produce Great Bodily Injury), and (3a) Penal Code section 12022.5 (Use of Firearm in Commission of Felony), all felonies. On or about October 15, 1990, Respondent was convicted of violating Penal Code section 245, subdivision (a)(1) (Assault with Deadly Weapon Other Than Firearm By Means of Force Likely to Produce Great Bodily Injury), a felony. Imposition of sentence was suspended in favor of a period of probation of three (3) years, on terms and conditions including time served, a stay-away order, and fines and fees.

11. On or about November 2, 1991, Respondent was arrested by Alameda Police after he physically resisted and battered several officers who were attempted to detain and question him about his role in an altercation in a nearby bar/club. Among other things, Respondent bit one or more officers. He was subsequently charged, in a case titled *People v. Anthony Kevin Crosby*, Case No. 54649 in Alameda County Municipal Court (Alameda Judicial District), with violating (1) Health and Safety Code section 11350, subdivision (a) (Possession of Controlled Substance – **cocaine**), (2) Penal Code section 243, subdivision (d) (Battery Causing Serious Bodily Injury – Upper Inner Thigh), (3) Penal Code section 243, subdivision (d) (Battery Causing Serious Bodily Injury – Major Damage to Knee), and (3a) Penal Code section 12022.7 (Infliction of Great Bodily Injury During Commission of a Felony), all felonies. The case was subsequently transferred to the Superior Court and given Case No. 111482. On or about June 29, 1992, Respondent pleaded *nolo contendere* to and was convicted of the (substituted) charge of violating Penal Code section 243, subdivision (c) (Battery on a Public (Non-Peace) Officer), a felony. Imposition of sentence was suspended in favor of a period of probation of three (3) years, on terms and conditions including time served, HIV testing, restitution, and fines and fees.

12. On or about February 6, 1993, Respondent was arrested by Richmond Police after he threatened another driver with a gun, and led police on a vehicular chase. He was subsequently charged, in a case titled *People v. Anthony Kevin Crosby*, Case No. 931246-3 in Contra Costa County Superior Court, with violating (1) Penal Code section 245, subdivision (a)(2) (Assault on Person of Another With Firearm), a felony, (2) Vehicle Code section 23103 (Reckless Driving), a felony, (3) Penal Code section 148, subdivision (a)(1) (Obstructing/Resisting Peace Officer), a misdemeanor, (4) Vehicle Code section 2800.2 (Evading Peace Officer - Disregard for Safety), a felony, and (5) Penal Code section 12021, subdivision (a) (Convicted Felon/Addict in Possession of Firearm), a felony. On or about October 22, 1993, Respondent was convicted (following trial) of violating Vehicle Code section 23103 (Reckless Driving), a felony, Vehicle Code section 2800.2 (Evading Peace Officer - Disregard for Safety), a felony, and Penal Code section 148, subdivision (a)(1) (Obstructing/Resisting Peace Officer), a misdemeanor. Respondent was given a sentence including sixteen (16) months in prison, a restitution fine, and drug counseling.

13. On or about December 6, 1996, Respondent was arrested by Fairfield Police after an incident in which he: allegedly tried to entice a teenage girl (under 18) into his car with money; fled in his car from police officers responding to a report of this conduct and led them on a chase; fought with officers after they got him out of his car; and got into one of the police vehicles and drove it onto a sidewalk/front lawn, tried to back it up into the police officers, and left it disabled. He was subsequently charged, in a case titled *People v. Anthony Kevin Crosby*, Case No. C43126 in Solano County Municipal Court (Northern Solano Judicial District) with violating (1) Penal Code 647.6 (Annoy/Molest Child Under 18), a misdemeanor, (2) Vehicle Code section 2800.2 (Evading Peace Officer With Disregard for Safety), a felony, (3) Vehicle Code section 10851, subdivision (a) (Driving or Taking Vehicle Without Consent of Owner), a felony, (4) Penal Code section 245, subdivision (c) (Assault with Deadly Weapon on Peace Officer or Firefighter), a felony, and (5) Vehicle Code section 20002, subdivision (a) (Hit and Run), a misdemeanor; the Felony Complaint also included allegations regarding Respondent's 1993 felony convictions, his prison sentence and succeeding parole, and the occurrence of the 1996 offenses during parole.

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14. On or about February 9, 1998, Respondent was convicted in Case No. C43126 of violating Vehicle Code section 2800.2 (Evading Peace Officer - Disregard for Safety), a felony, Vehicle Code section 10851, subdivision (a) (Driving or Taking Vehicle Without Consent of Owner), a felony, and Penal Code section 245, subdivision (c) (Assault with Deadly Weapon on Peace Officer or Firefighter), a felony. He was sentenced to state prison for a period of seven (7) years and four (4) months (88 months), suspended, a probation of five (5) years, on terms and conditions including one (1) year (365 days) in county jail, payment of restitution, abstention from drugs or alcohol, alcohol and drug testing as required by probation, search conditions, drug and alcohol counseling and/or 12-step recovery group attendance, proof of gainful employment, and an order that Respondent stay away from female minors and from schools.

15. On or about November 9, 1998, Respondent submitted an initial application to be a pharmacy technician to the Board of Pharmacy. That application was denied. After a Statement of Issues was filed on or about May 19, 2000, Respondent withdrew the prior application.

16. On or about December 1, 2007, Respondent signed and submitted the now-pending Application for Registration as a Pharmacy Technician and included affidavit, certifying under penalty of perjury the truth and accuracy of all statements, answers, and representations therein. That Application includes seven yes/no questions on pages 2 and 3, preceded by the instruction:

You must provide a written explanation for all affirmative answers indicated below. Failure to do so may result in this application being deemed incomplete and being withdrawn.

Question 6 of this series of questions in the Application then asks:

Have you ever been convicted of or pled no contest to a violation of any law of a foreign country, the United States or any state laws or local ordinances? You must include all misdemeanor and felony convictions, regardless of the age of the conviction, including those which have been set aside under Penal Code section 1203.4. Traffic violations of $500 or less need not be reported. **If "yes," attach an explanation including the type of violation, the date, circumstances, location and the complete penalty received.** In addition to this written explanation, please provide the Board of Pharmacy with **certified copies of all pertinent court documents or arrest reports relating to this conviction.**

17. Respondent checked the box for "Yes" in response to Question 6, and attached to his application a sheet of paper listing the convictions described in paragraphs 8-14 above, but he did not attach any of the required documentation (court documents or arrest reports).

FIRST CAUSE FOR DENIAL OF APPLICATION

(Conviction(s) of Substantially Related Crime(s))

18. Respondent's application is subject to denial under the following section(s) of the Code: 480(a)(1); 480(a)(3) by reference to 4301(l); and/or 4300(c) by reference to 4301(l) as well as by reference to California Code of Regulations, title 16, section 1770, in that, as described in paragraphs 8-14 above, Respondent was convicted of a crime or crimes substantially related to qualifications, functions, or duties of the license sought.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

19. Respondent's application is subject to denial under the following section(s) of the Code: 480(a)(2); 480(a)(3) by reference to 4301(f); and/or 4300(c) by reference to 4301(f), in that, as described in paragraphs 8, 13, and 14 above, Respondent engaged in conduct involving moral turpitude, dishonesty, fraud, deceit, or corruption.

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 Anthony Kevin Crosby to be a Pharmacy Technician;

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

DATED: 10/27/09

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

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