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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 Statement of Issues
12 Against:

Case No. 3457

13 **KENNETH TYRONE PATTERSON**
14 **981 Dolphin Drive**
Riverside CA 92571

STATEMENT OF ISSUES

15
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 April 21, 2005, the Board of Pharmacy, Department of Consumer
23 Affairs, received an application for registration as a pharmacy technician from Kenneth Tyrone
24 Patterson (Respondent). On or about March 21, 2005, Kenneth Tyrone Patterson 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 June 3, 2008.

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28 ///

JURISDICTION

1
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. Section 4300(c) of the Code states:

6 ...

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

- 13 (1) Medical or psychiatric evaluation.
- 14 (2) Continuing medical or psychiatric treatment.
- 15 (3) Restriction of type or circumstances of practice.
- 16 (4) Continuing participation in a board-approved rehabilitation program.
- 17 (5) Abstention from the use of alcohol or drugs.
- 18 (6) Random fluid testing for alcohol or drugs.
- 19 (7) Compliance with laws and regulations governing the practice of
20 pharmacy.

21 5. Section 477 of the Code states:

22 "As used in this division:

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

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

STATUTORY PROVISIONS AND REGULATIONS

27 6. Section 475 of the Code states:

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

...
29

(2) Conviction of a crime.

...
30

(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.

...
31

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

1 7. Section 480 of the Code states, in pertinent part:

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

4 (1) Been convicted of a crime. A conviction within the meaning of this
5 section means a plea or verdict of guilty or a conviction following a plea of nolo
6 contendere. Any action that a board is permitted to take following the establishment
7 of a conviction may be taken when the time for appeal has elapsed, or the judgment
8 of conviction has been affirmed on appeal, or when an order granting probation is
9 made suspending the imposition of sentence, irrespective of a subsequent order
10 under the provisions of Section 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
14 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 (b) Notwithstanding any other provision of this code, no person shall be
19 denied a license solely on the basis that he or she has been convicted of a felony if
20 he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing
21 with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has
22 been convicted of a misdemeanor if he or she has met all applicable requirements of
23 the criteria of rehabilitation developed by the board to evaluate the rehabilitation of
24 a person when considering the denial of a license under subdivision (a) of Section
25 482.

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

1 8. Section 4301 of the Code states:

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

6 ...

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

10 ...

11 (h) The administering to oneself, of any controlled substance, or the use of
12 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
13 dangerous or injurious to oneself, to a person holding a license under this chapter, or
14 to any other person or to the public, or to the extent that the use impairs the ability

1 of the person to conduct with safety to the public the practice authorized by the
license.

2 ...

3 (1) The conviction of a crime substantially related to the qualifications,
4 functions, and duties of a licensee under this chapter. The record of conviction of a
5 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
6 States Code regulating controlled substances or of a violation of the statutes of this
7 state regulating controlled substances or dangerous drugs shall be conclusive
8 evidence of unprofessional conduct. In all other cases, the record of conviction shall
9 be conclusive evidence only of the fact that the conviction occurred. The board may
10 inquire into the circumstances surrounding the commission of the crime, in order to
11 fix the degree of discipline or, in the case of a conviction not involving controlled
12 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.

13

14 9. Section 493 of the Code states:

15 Notwithstanding any other provision of law, in a proceeding conducted by a
16 board within the department pursuant to law to deny an application for a license or
17 to suspend or revoke a license or otherwise take disciplinary action against a person
18 who holds a license, upon the ground that the applicant or the licensee has been
19 convicted of a crime substantially related to the qualifications, functions, and duties
20 of the licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in
order to fix the degree of discipline or to determine if the conviction is substantially
related to the qualifications, functions, and duties of the licensee in question.

21 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
'registration.'

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

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

1 11. Section 482 of the Code states:

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

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

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

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

8 12. Title 16, of the California Code of Regulations, section 1769, sets forth the following
9 factors to consider with regard to evidence of rehabilitation:

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

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

14 (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.

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

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

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

18 **FIRST CAUSE FOR DENIAL OF APPLICATION**

19 **(November 19, 1999 Conviction of Assault with Weapon on May 2, 1999)**

20 13. Respondent's application is subject to denial under Code sections 480(a)(1) and
21 480(a)(3), in conjunction with section 4301(l), for conviction of a crime that is substantially
22 related to the qualifications, functions and duties of a registered pharmacy technician in that on
23 November 19, 1999, in a criminal proceeding entitled *People of the State of California v. Kenneth*
24 *Tyrone Patterson* in Riverside Superior Court, Case Number RIF086309, Respondent was
25 convicted on his guilty plea of assault with a weapon likely to produce great bodily injury in
26 violation of Penal Code section 245(a)(1).

27 14. As a result of Respondent's conviction, he was sentenced to 3 years probation,
28 committed to the Sheriff's custody for 90 days and ordered to pay \$100 in fees and fines.

1 **SECOND CAUSE FOR DENIAL OF APPLICATION**

2 **(March 23, 2001 Conviction of Child Abuse on October 22, 2000)**

3 15. Respondent's application is subject to denial under Code sections 480(a)(1) and
4 480(a)(3), in conjunction with section 4301(1), for conviction of a crime that is substantially
5 related to the qualifications, functions and duties of a registered pharmacy technician in that on
6 March 23, 2001 in a criminal proceeding entitled *People of the State of California v. Kenneth*
7 *Tyrone Patterson* in Riverside Superior Court, Case Number RIF094900, Respondent was
8 convicted by plea of guilty of violation of Penal Code section 273(A), willfully causing injury to
9 a child or endangering the person or health of a child, a misdemeanor.

10 16. The circumstances leading to the conviction are as follows. On or about October 22,
11 2000, a deputy from Riverside County Sheriff's Department was dispatched to a residence
12 regarding possible corporal injury to a child. When the deputy arrived at the scene, S.W. told the
13 deputy that she believed Respondent, her ex-boyfriend and the father of K. P., struck K.P, with a
14 belt. K.P. was one year old. S.W. explained to the deputy that as she was leaving for work at
15 1:15 p.m. on October 21, 2000., K.P. had been crying and Respondent yelled at K.P. to "Shut up."
16 S.W. exited the house but returned inside when she realized she forgot something. When she
17 returned, she saw Respondent walking out of the master bedroom with a black belt in his hands.
18 Respondent was walking towards K.P.'s room but when Respondent saw S.W., he turned and
19 walked towards the living room instead. S.W. left for work. S.W. returned home at 2:30 a.m. on
20 October 22, 2000. When she arrived at home, she saw Respondent and several of his friends
21 having a party and Respondent appeared intoxicated. S.W. went into K.P.'s room and began to
22 change his diaper. As she removed K.P.'s diaper, she saw bruises on K.P.'s legs. The deputy
23 noted that K.P. had two 3-inch bruises on the back of his left leg and one 3-inch bruise on the
24 back of his right leg. Respondent was arrested and charged with violation of Penal Code section
25 273(A), a felony. Following a motion filed by Respondent's attorney, the charge was reduced to
26 a misdemeanor.

27 17. As a result of Respondent's guilty plea, Respondent was sentenced to 3 years
28 probation, committed to 180 days in custody, required to pay \$562.00 in fines and fees, and

1 required to attend parenting classes for 52 weeks and participate in a rehabilitation or treatment
2 program.

3 **THIRD CAUSE FOR DENIAL OF APPLICATION**

4 **(June 20, 2005 Conviction of Trespass on October 20, 2004)**

5 18. Respondent's application is subject to denial under Code sections 480(a)(1) and
6 480(a)(3), in conjunction with section 4301(1), for conviction of a crime that is substantially
7 related to the qualifications, functions and duties of a registered pharmacy technician in that on
8 June 20, 2005 in a criminal proceeding entitled *People of the State of California v. Kenneth*
9 *Tyrone Patterson* in Riverside Superior Court, Case Number RIM457764, Respondent was
10 convicted by plea of guilty of violation of Penal Code section 602(m), entering and occupying
11 real property or structures without the consent of the owner, the owner's agent or the person in
12 lawful possession.

13 19. The circumstances that led to the conviction are as follows. On October 20, 2004, at
14 about 2:00 a.m., a deputy of the Riverside County Sheriff's Department responded to a call from
15 the Circle K located in Moreno Valley with regard to a burglary in progress. The Sheriff
16 Department's dispatcher received a call from the store clerk, A.D. that three males forced their
17 way into the store and were taking items. When the deputy arrived, he spoke with K.R., the other
18 store clerk on duty that morning. K.R. told the deputy that at about 2:00 a.m. on October 20,
19 2004, K.R. and A.D. locked the front doors of the store and that they were in the cooler re-
20 stocking it when they heard banging on the front door. K.R. stated that Respondent and another
21 man, J.L., were banging on the glass front doors with both hands and were yelling that they
22 wanted to come in. After a short period of time, K.R. exited the cooler to tell Respondent and the
23 other man that they could not enter the store. When K.R. exited the cooler, he saw three males
24 inside the store, including Respondent. Respondent told K.R., "You'd better fix your door. It's f-
25 --- up." Not wanting a confrontation with the men, K.R. walked behind the front counter and
26 waited for them to select their items to purchase. Respondent wanted to purchase a beer but K.R.
27 told him that since it was after 2:00 a.m., that K.R. could not sell him beer. All three men walked
28 to the beer cooler and opened it. K.R. heard glass breaking but did not see what was happening

1 by the cooler. Respondent walked to the front counter and paid for a bag of chips and an energy
2 drink. The other men exited the store without paying for any items. The deputy viewed the
3 store's surveillance tape from the camera pointed towards the front doors. The tape showed
4 Respondent and J.L. banging on the front doors with their hands. The tape showed Respondent
5 grabbing the handle and pushing the doors in and then pulling the doors back out, causing the
6 doors to flex enough so that the dead bolt popped out, allowing the doors to be opened.
7 Respondent and J.L. were arrested for burglary. When the deputy asked Respondent if he forced
8 the front doors open by pushing them in and then pulling them back out, Respondent told the
9 deputy that he simply knocked on the door and it opened so he and the other men entered the
10 store.

11 20. As a result of his guilty plea, Respondent was ordered to pay fines and fees of
12 \$120.00.

13 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

14 **(Unprofessional Conduct-Commission of an Act Involving Dishonesty and Deceit)**

15 21. Respondent's application is subject to denial under Code sections 480(a)(2) and
16 480(a)(3), in conjunction with section 4301(f), for unprofessional conduct in that on October 20,
17 2004, Respondent entered the Circle K convenience store without the consent of its owner or its
18 owner's agent, as more fully set forth in paragraphs 18-20, above.

19 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

20 **(June 20, 2005 Conviction of DUI on March 21, 2005)**

21 22. Respondent's application is subject to denial under Code sections 480(a)(1) and
22 480(a)(3), in conjunction with section 4301(l), for conviction of a crime that is substantially
23 related to the qualifications, functions and duties of a registered pharmacy technician in that on
24 June 20, 2005 in a criminal proceeding entitled *People of the State of California v. Kenneth*
25 *Tyrone Patterson* in Riverside Superior Court, Case Number RIM467742, Respondent was
26 convicted by his guilty plea of violating of Vehicle Code section 23152(b), driving under the
27 influence of alcohol with a blood alcohol content of 0.08% or greater.

28

1 23. The circumstances leading to the conviction are as follows. At 10:23 p.m. on March
2 21, 2005, deputies of the Riverside Sheriff's Department responded to numerous calls regarding a
3 fight taking place in an alley that involved weapons and the throwing of bottles. Upon arriving at
4 the scene, the deputy observed Respondent standing in the alley and two men seated inside a
5 white and blue Bronco with no license plates. Respondent told the deputy he was just "play
6 fighting" with another male. There were no other persons in the alley. The deputy observed that
7 Respondent's eyes were watery and his speech slurred and that Respondent's breath had the odor
8 of alcohol. Respondent admitted to the deputy he had been drinking beers earlier and that the
9 Bronco belonged to him. The deputy advised Respondent not to drive since he had been
10 drinking. Respondent stated that he was not going to drive, but was going inside his friend's
11 house. The deputy proceeded to leave the scene. Fifteen minutes later, as the deputy was driving
12 east on Adrienne Avenue, he observed the Bronco driving west on Adrienne toward the patrol car
13 and eventually passed it. When the Bronco passed the patrol car, the deputy observed
14 Respondent behind the steering wheel. The deputy made a u-turn and conducted a traffic stop of
15 the Bronco. The deputy observed that Respondent's eyes were still red and watery and his speech
16 was slurred. The deputy smelled the odor of an alcoholic beverage on Respondent's breath. The
17 deputy began to conduct field sobriety tests, but during the test, was advised of a shooting in the
18 area. Since the deputy felt it was unsafe to continue with the field sobriety tests in the area where
19 a shooting had just occurred, Respondent was transported to the Sheriff's Station to complete the
20 tests. Respondent also completed a preliminary breath test that resulted in a blood alcohol
21 content reading of 0.141%. Subsequent breath tests resulted in blood alcohol contents of 0.14%
22 and 0.12%. Respondent was booked for violating Vehicle Code section 23152(a) and (b), DUI
23 and DUI with a blood alcohol content of 0.08% or greater. He was released on a citation to
24 appear in court.

25 24. As a result of Respondent's plea of guilty of violating of Vehicle Code section
26 23152(b), the other charge was dismissed and he was sentenced to 3 years probation; committed
27 to 20 days in custody; required to pay \$1,888.00 in fines and fees; and required to complete a
28 drinking driver program.

1 **EIGHTH CAUSE FOR DENIAL OF APPLICATION**

2 **(Making a False Statement on License Application)**

3 29. Respondent's application is subject to denial under Code sections 480(c) in that
4 Respondent knowingly made a false statement on his license application signed on March 21,
5 2005, when he disclosed only the conviction of March 21, 2001 for corporal injury to a child in
6 violation of Penal Code section 273(A), but failed to disclose any of his other convictions as set
7 forth above.

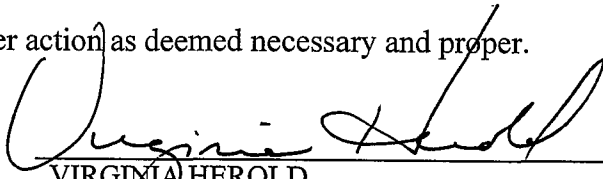
8 **PRAYER**

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

11 1. Denying the application of Kenneth Tyrone Patterson for a Pharmacy Technician
12 Registration;

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

14 DATED: 3/10/10

15 
16 VIRGINIA HEROLD
17 Executive Officer
18 Board of Pharmacy
19 Department of Consumer Affairs
20 State of California
21 Complainant

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