

1 EDMUND G. BROWN JR.
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 KIM M. SETTLES
Deputy Attorney General
4 State Bar No. 116945
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2138
Facsimile: (510) 622-2270
7 E-mail: kim.settles@doj.ca.gov
Attorneys for Complainant

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10 **BEFORE THE**
11 **BOARD OF PHARMACY**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14 In the Matter of the Statement of Issues
Against:

Case No. 3856

15 **DENNIS OCHOA**
16 **36570 Bettencourt Street**
17 **Newark, California 94560**

**FIRST AMENDED STATEMENT OF
ISSUES**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

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

24 2. On or about September 25, 2009, the California State Board of Pharmacy received an
25 application for registration as a Pharmacy Technician from Dennis James Ochoa (Respondent).

26 On or about August 26, 2009, Dennis James Ochoa certified under penalty of perjury to the

27 truthfulness of all statements, answers, and representations in the application. The Board denied
28 the application on or about June 29, 2010.

1 **JURISDICTION**

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

5 **STATUTORY PROVISIONS**

6 4. Section 4300 of the Code states, in pertinent part:

7 ...

8 “(c) The board may refuse a license to any applicant guilty of unprofessional
9 conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a
10 license who is guilty of unprofessional conduct and who has met all other requirements for
11 licensure. . .”

12 5. Section 4301 of the Code states, in pertinent part:

13 “The board shall take action against any holder of a license who is guilty of
14 unprofessional conduct. . . Unprofessional conduct shall include, but is not limited to, any of the
15 following:

16 ...

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

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

22 “(h) The administering to oneself, of any controlled substance, or the use of any
23 dangerous drug or alcoholic beverage to the extent or in a manner as to be dangerous or injurious
24 to oneself, to a person holding a license under this chapter, or to any other person or to the public,
25 or to the extent that the use impairs the ability of the person to conduct with safety to the public
26 the practice authorized by the license.”

27 ...

28 “(k) The conviction of more than one misdemeanor or any felony involving the use,

1 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
2 combination of those substances.

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

5 6. Section 4310 of the Code states:

6 “Immediately upon the denial of any application for a license the board shall notify
7 the applicant in writing. Within 10 days after the board mails the notice, the applicant may
8 present his or her written petition for a license to the board. Upon receipt by the board of the
9 written petition, proceedings shall be conducted in accordance with Chapter 5 (commencing with
10 Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.”

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

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

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

20 “(2) Done any act involving dishonesty, fraud or deceit with the intent to
21 substantially benefit himself or another, or substantially injure another, or

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

24 “The board may deny a license pursuant to this subdivision only if the crime or
25 act is substantially related to the qualifications, functions or duties of the business or profession
26 for which application is made.

27 . . .

28 “(c) A board may deny a license regulated by this code on the ground that the

1 applicant knowingly made a false statement of fact required to be revealed in the application for
2 such license.”

3 **FIRST CAUSE FOR DENIAL OF APPLICATION**

4 **(Conviction of Crimes)**

5 8. Respondent’s application is subject to denial under sections 4300, 4301, subdivision
6 (l) and 480, subdivision (a)(1), in that he was convicted of the following crimes that are
7 substantially related to the qualifications, functions, and duties of a registered pharmacy
8 technician.

9 A. On or about January 4, 2002, in San Diego County Municipal Court, Case No.
10 M850201, entitled *People v. Ochoa, Dennis*, Respondent was convicted of violating Vehicle
11 Code section 23152, subdivision (a) (driving under the influence).

12 The circumstances of the crime were that Respondent willfully and unlawfully drove a
13 vehicle while under the influence of an alcoholic beverage.

14 B. On or about June 23, 2004, in Monterey County Superior Court, Case No. SS041295,
15 entitled *The People of the State of California v. Dennis James Ochoa*, Respondent was convicted
16 by his plea of guilty of violating Vehicle Code section 23153, subdivision (a) (driving under the
17 combined influence of alcohol and drugs and causing bodily injury).

18 The circumstances of the crime were that on or about March 21, 2004, Respondent willfully
19 and unlawfully drove a vehicle while under the combined influence of alcohol and a drug, lost
20 control of his vehicle, “rolled” the vehicle, and caused bodily injury to his passenger.

21 C. On or about July 15, 2009, in San Mateo County Superior Court, Case No. NM38478,
22 entitled *The People of the State of California v. Dennis James Ochoa*, Respondent was convicted
23 by his plea of nolo contendere of violating Vehicle Code section 31 (false information to peace
24 officer).

25 The circumstances of the crime were that on or about May 17, 2009, Respondent was
26 detained on suspicion of driving under the influence and willfully and unlawfully gave false
27 information regarding his identity to a police office, when he knew that such information was
28 false.

1 D. On or about July 15, 2009, in San Mateo County Superior Court, Case No.
2 SM364159A, entitled *The People of the State of California v. Dennis James Ochoa*, Respondent
3 was convicted by his plea of nolo contendere of violating Vehicle Code section 23152,
4 subdivision (b) (driving while having .08% or higher blood alcohol).

5 The circumstances of the crime were that on or about May 17, 2009, Respondent willfully
6 and unlawfully drove a vehicle, while having .08% of alcohol in his blood.

7 E. On or about March 7, 2007, in Santa Clara County Superior Court, Case No.
8 CC646022, entitled *People v. Ochoa, Dennis James*, Respondent was convicted of violating
9 Penal Code section 647, subdivision (f) (disorderly conduct/intoxication in a public place).

10 The circumstances of the crime were that on or about October 15, 2006, Respondent was
11 arrested for being intoxicated and disorderly in a public place.

12 F. On or about March 23, 1998, in Reno Superior Court, Case No. M247CR29754597,
13 entitled *People v. Dennis Ochoa*, Respondent was convicted of obstruction of justice and resisting
14 arrest.

15 The circumstances of the crime were that on or about January 31, 1997, Respondent was
16 arrested for fighting in public and resisting arrest.

17 **SECOND CAUSE FOR DENIAL OF APPLICATION**

18 **(Conviction of a Crime Involving the Consumption of Alcohol)**

19 9. Respondent's application is subject to denial under sections 4300 and 4301,
20 subdivision (k), on the grounds of unprofessional conduct in that Respondent was convicted of
21 crimes involving the consumption of alcohol, as set forth in paragraph 8, subsections (A), (B),
22 (D), (E), and (F), above.

23 **THIRD CAUSE FOR DENIAL OF APPLICATION**

24 **(Unprofessional Conduct: Misrepresentation Regarding the Nonexistence of Facts)**

25 10. Respondent's application is subject to denial under sections 4300 and 4301,
26 subdivision (g), on the grounds of unprofessional conduct in that Respondent knowingly failed to
27 disclose his 1998 conviction on his application for registration as a Pharmacy Technician, as set
28 forth in paragraph 8, subdivision (F), above.

1 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

2 **(Acts Disqualifying Applicant: False Statement)**

3 11. Respondent's application is subject to denial under section 480, subdivision (c) in that
4 he engaged in conduct which would have warranted denial of a license, as set forth in paragraph
5 10 above.

6 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

7 **(Unprofessional Conduct: Commission of an Act Involving Dishonesty)**

8 12. Respondent's application is subject to denial under sections 4300 and 4301,
9 subdivision (f), on the grounds of unprofessional conduct in that Respondent was convicted of
10 providing false information to a peace officer, as set forth in paragraph 8, subdivision (C), above.

11 **SIXTH CAUSE FOR DENIAL OF APPLICATION**

12 **(Conviction of a Crime)**

13 13. Respondent's application is subject to denial under sections 4300, 4301, subdivision
14 (l) and 480, subdivision (a)(1), in that he was convicted of a crime that is substantially related to
15 the qualifications, functions, and duties of a registered pharmacy technician.

16 A. On or about May 18, 1998, in Fremont-Newark-Union City Municipal Court, Case
17 No. 179526, entitled *People v. Ochoa, Dennis James*, Respondent was convicted of violating
18 Vehicle Code section 23152, subdivision (a) (driving under the influence).

19 The circumstances of the crime were that Respondent willfully and unlawfully drove a
20 vehicle while under the influence of an alcoholic beverage.

21 **SEVENTH CAUSE FOR DENIAL OF APPLICATION**

22 **(Conviction of a Crime Involving the Consumption of Alcohol)**

23 14. Respondent's application is subject to denial under sections 4300 and 4301,
24 subdivision (k), on the grounds of unprofessional conduct in that Respondent was convicted of
25 crimes involving the consumption of alcohol, as set forth in paragraph 13, above.

26 **EIGHTH CAUSE FOR DENIAL OF APPLICATION**

27 **(Use of Alcoholic Beverages and Drugs)**

28 15. Respondent's application is subject to denial under section 4301, subdivision (h), on

1 the grounds of unprofessional conduct, by virtue of the convictions set forth in paragraph 8,
2 subdivisions (A), (B), (D) and (E), and paragraph 13.

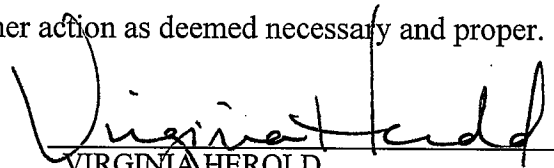
3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters alleged here,
5 and that following the hearing, the California State Board of Pharmacy issue a decision:

6 1. Denying the application of Dennis James Ochoa for a Pharmacy Technician
7 Registration;

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

9 DATED: 3/8/11



10 VIRGINIA HEROLD
11 Executive Officer
12 Board of Pharmacy
13 Department of Consumer Affairs
14 State of California
15 Complainant

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