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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. 3872

13 **LISA MARIE SCHILLING AKA**
14 **LISA MARIE BUSTAMANTE**
15 **14391 WILLOW LANE**
TUSTIN, CA 92780

STATEMENT OF ISSUES

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about October 30, 2009, the Board of Pharmacy, Department of Consumer
22 Affairs received an application for a Pharmacy Technician Registration from Lisa Marie Schilling
23 aka Lisa Marie Bustamante (Respondent). On or about October 6, 2009, Respondent certified
24 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
25 application. The Board denied the application on August 10, 2010.

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

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

11 (1) Medical or psychiatric evaluation.

12 (2) Continuing medical or psychiatric treatment.

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

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

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

16 (6) Random fluid testing for alcohol or drugs.

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

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

STATUTORY PROVISIONS

22 5. Section 475 of the Code states, in pertinent part:

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

25 (1) Knowingly making a false statement of material fact, or knowingly omitting to state a
26 material fact, in an application for a license.

27 (2) Conviction of a crime.
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1 (3) Commission of any act involving dishonesty, fraud or deceit with the intent to
2 substantially benefit himself or another, or substantially injure another.

3 (4) Commission of any act which, if done by a licentiate of the business or profession in
4 question, would be grounds for suspension or revocation of license.”

5 4. Section 480 of the Code states, in pertinent part:

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

8 (1) Been convicted of a crime. . . .

9 (2) Done any act involving dishonesty, fraud or deceit with the intent to substantially
10 benefit himself or herself or another, or substantially injure another.

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

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14 (c) A board may deny a license regulated by this code on the ground that the applicant
15 knowingly making a false statement of fact required to be revealed in the application for the
16 license.”

17 5. Section 482 of the Code states:

18 “Each board under the provisions of this code shall develop criteria to evaluate the
19 rehabilitation of a person when:

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

21 (b) Considering the suspension or revocation of a license under Section 490.

22 Each board shall take into account all competent evidence of rehabilitation furnished by
23 the applicant or licensee.”

24 6. Section 493 of the Code states:

25 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
26 the department pursuant to law to deny an application for a license or to suspend or revoke a
27 license or otherwise take disciplinary action against a person who holds a license, upon the
28 ground that the applicant or the licensee has been convicted of a crime substantially related to the

1 qualifications, functions, and duties of the licensee in question, the record of conviction of the
2 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
3 and the board may inquire into the circumstances surrounding the commission of the crime in
4 order to fix the degree of discipline or to determine if the conviction is substantially related to the
5 qualifications, functions, and duties of the licensee in question.

6 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
7 'registration.'"

8 7. Section 4060 of the Code states:

9 "No person shall possess any controlled substance, except that furnished to a person upon
10 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
11 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
12 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
13 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
14 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
15 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
16 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
17 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
18 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
19 labeled with the name and address of the supplier or producer.

20 Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
21 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
22 devices."

23 8. Section 4301 of the Code states:

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

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28 (b) Incompetence.

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(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.

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

1 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
2 violation of or conspiring to violate any provision or term of this chapter or of the applicable
3 federal and state laws and regulations governing pharmacy, including regulations established by
4 the board or by any other state or federal regulatory agency.

5 (p) Actions or conduct that would have warranted denial of a license.”

6 **REGULATORY PROVISIONS**

7 9. California Code of Regulations, Title 16, Section 1770, states:

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

14 10. California Code of Regulations, Title 16, Section 1769, states, in pertinent part:

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

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

20 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under
21 consideration as grounds for denial under Section 480 of the Business and professions Code.

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

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

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

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DRUGS

1 11. Methamphetamine is a schedule II controlled substance as designated by Health and
2 Safety Code section 11055(d)(2), and is a dangerous drugs pursuant to Business and Professions
3 Code section 4022.

FIRST CAUSE FOR DENIAL OF APPLICATION

(April 11, 2008 Criminal Conviction - DUI & Hit & Run on January 26, 2008)

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6 12. Respondent's application is subject to denial under Code sections 475(a)(2),
7 480(a)(1), 493, 4300(c), 4301(j), 4301(k), 4301(l), 4301(o), and 4301(p) in that on or about April
8 11, 2008, in the criminal proceeding entitled *People v. Schilling*, Superior Court Los Angeles
9 County Case No. 8WW01277, Respondent plead nolo contendere and the court found her guilty
10 of driving while having a 0.08% or higher blood alcohol content in violation of Vehicle Code
11 section 23152(B) and a hit and run with property damage in violation of Vehicle Code section
12 20002(A). The circumstances of the crime are as follows:

13 13. On or about January 26, 2008, Los Angeles County Sheriff's Department received a
14 crime broadcast regarding a hit and run accident at approximately 2122 hours. Officer Aguilera
15 located and detained Respondent as the driver of the hit and run vehicle that fled the scene of the
16 traffic collision. Based on party and witness statements, Officer Aguilera determined that
17 Respondent caused the collision by failing to stop for a red traffic signal in violation of Vehicle
18 Code section 21453(A) and driving while being under the influence of alcohol in violation of
19 Vehicle Code section 23152(A). Respondent's blood test reflected that she had .20% blood
20 alcohol concentration.

21 14. On or about April 11, 2008, Respondent was sentenced to 36 months probation and
22 ordered to pay fines and restitution and to complete a nine month first offender alcohol and drug
23 education counseling program.

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1 and Safety Code section 11377(A) and being under the influence of a controlled substance
2 without a prescription in violation of Health and Safety Code section 11550(A). On or about
3 February 1, 2007, Respondent pled guilty to possession of a controlled substance without a
4 prescription in violation of Health and Safety Code section 11377(A).

5 18. On or about February 1, 2007, Respondent was placed on deferred entry of judgment
6 for a period of 18 months pursuant to Penal Code section 1000.

7 19. Respondent violated her probation when she was arrested on January 26, 2008 and
8 then convicted on April 11, 2008 of DUI and hit and run with property damage in the criminal
9 proceeding entitled *People v. Schilling*, Superior Court Los Angeles County Case No.
10 8WW01277.

11 20. On or about August 1, 2008, Respondent admitted her probation violation and was
12 convicted of possession of a controlled substance without a prescription in violation of Health and
13 Safety Code section 11377(A) and being under the influence of a controlled substance without a
14 prescription in violation of Health and Safety Code section 11550(A) on November 13, 2006, in
15 the proceeding entitled *People v. Schilling*, Superior Court Los Angeles County Case No.
16 7DY00126.

17 21. On or about August 1, 2008, Respondent's probation for 36 months was reinstated.
18 Respondent was placed on probation for an additional year. Respondent was also ordered to
19 serve 100 days in Los Angeles County jail. In lieu of county jail time, Respondent had the option
20 of completing a 100 day live-in rehabilitation program.

21 **THIRD CAUSE FOR DENIAL OF APPLICATION**

22 **(Unprofessional Conduct – Failure to Disclose Conviction)**

23 22. Respondent's application is subject to denial under Code sections 475(a)(1),
24 475(a)(3), 480(a)(2), 480(c), 4300(c), 4301(f), 4301(g), and 4301(p) for unprofessional conduct
25 for failing to report her August 1, 2008 criminal conviction for possession of a controlled
26 substance without a prescription and being under the influence of a controlled substance without a
27 prescription on her application for registration as a pharmacy technician. On or about October 6,
28 2009, Respondent certified under penalty of perjury as to the truthfulness of all statements,

1 answers, and representations made in her application for a Pharmacy Technician Registration,
2 including all supplementary statements. Question number 6 on Respondent's application asked
3 "Have you ever been convicted of or pled no contest to a violation of any law of a foreign
4 country, the United States or any state laws or local ordinances? You must include all
5 misdemeanor and felony convictions, regardless of the age of the conviction, including those
6 which have been set asked under Penal Code section 1203.4" Respondent answered "Yes."
7 Respondent provided some information regarding her "DUI case in January of 2008" Respondent
8 did not give complete information regarding her April 11, 2008 DUI and hit and run accident
9 conviction. Respondent failed to mention her August 1, 2008 conviction regarding her possession
10 of a controlled substance.

11 **FORTH CAUSE FOR DENIAL OF APPLICATION**

12 **(Acts Involving Dishonesty, Fraud or Deceit –**
13 **Making False Statements on Application for Licensure)**

14 23. Respondent's application is subject to denial under Code sections 475(a)(1),
15 475(a)(3), 480(a)(2), 480(c), 4300(c), 4301(f), 4301(g), and 4301(p) for acts involving dishonesty
16 when she knowingly made a false statement of fact on her September 23, 2009 application for
17 Vocational Nurse License by failing to mention her August 1, 2008 conviction regarding her
18 possession of a controlled substance. On or about October 6, 2009, Respondent certified under
19 penalty of perjury as to the truthfulness of all statements, answers, and representations made in
20 her application for a Pharmacy Technician Registration, including all supplementary statements.
21 Question number 6 on Respondent's application asked "Have you ever been convicted of or pled
22 no contest to a violation of any law of a foreign country, the United States or any state laws or
23 local ordinances? You must include all misdemeanor and felony convictions, regardless of the
24 age of the conviction, including those which have been set asked under Penal Code section
25 1203.4" Respondent answered "Yes." Respondent provided some information regarding her
26 "DUI case in January of 2008" Respondent did not give complete information regarding her
27 April 11, 2008 DUI and hit and run accident conviction. Respondent failed to mention her
28 August 1, 2008 conviction regarding her possession of a controlled substance.

1 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

2 **(Unprofessional Conduct –**
3 **Acts if Done by Licentiate Grounds for Suspension or Revocation)**

4 24. Respondent's application is subject to denial under Code sections 475(a)(4),
5 480(a)(3)(A), 4060, 4300(c), 4301(j), 4301(k), and 4301(l) for unprofessional conduct for an act
6 which if done by a licentiate would be grounds for suspension or revocation of her license when
7 Respondent was criminally convicted of DUI and hit and run with property damage on April 11,
8 2008 in the criminal proceeding entitled *People v. Schilling*, Superior Court Los Angeles County
9 Case No. 8WW01277.

10 25. Respondent's application is subject to denial under Code sections 475(a)(4),
11 480(a)(3)(A), 4060, 4300(c), 4301(j), 4301(k), and 4301(l) for unprofessional conduct for an act
12 which if done by a licentiate would be grounds for suspension or revocation of her license when
13 Respondent was criminally convicted of possession of a controlled substance without a
14 prescription in violation of Health and Safety Code section 11377(A) and being under the
15 influence of a controlled substance without a prescription in violation of Health and Safety Code
16 section 11550(A) on or about August 1, 2008 in the proceeding entitled *People v. Schilling*,
17 Superior Court Los Angeles County Case No. 7DY00126.

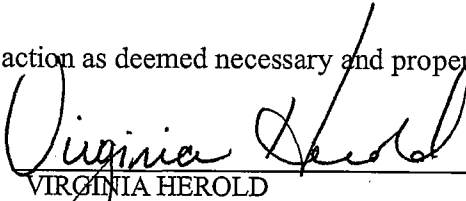
18 **PRAYER**

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

21 1. Denying the application of Lisa Marie Schilling aka Lisa Marie Bustamante for
22 Pharmacy Technician Registration.

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

24 DATED: 1/27/11



25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant

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