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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. 4051

13 **PAUL SPIVEY SMITH**  
14 **402 W. Kendall Street**  
15 **Corona, CA 92882**

**STATEMENT OF ISSUES**

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 May 4, 2010, the Board of Pharmacy, Department of Consumer Affairs  
23 received an application for a pharmacy technician license from Paul Spivey Smith (Respondent).  
24 On or about April 27, 2010, Paul Spivey Smith certified under penalty of perjury to the  
25 truthfulness of all statements, answers, and representations in the application. The Board denied  
26 the application on February 16, 2011.

27 ///

28 ///

1 JURISDICTION

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:

6 “....

7 “(c) The board may refuse a license to any applicant guilty of unprofessional conduct.

8 “....”

9 STATUTORY PROVISIONS

10 5. Section 475 of the Code states:

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

13 “....

14 “(2) Conviction of a crime.

15 “....

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

18 “....”

19 6. Section 480 of the Code states:

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

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

28 “....

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

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

6           “...”

7           7.     Section 482 of the Code states:

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

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

11          “(b) Considering suspension or revocation of a license under Section 490.

12          “Each board shall take into account all competent evidence of rehabilitation furnished by  
13 the applicant or licensee.”

14          8.     Section 493 of the Code states:

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

24          “As used in this section, “license” includes “certificate,” “permit,” “authority,” and  
25 “registration.””

26          ///

27          ///

28          ///

1           9.    Section 4301 of the Code states:

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

5           “ . . . .

6           “(h) The administering to oneself, of any controlled substance, or the use of any dangerous  
7 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
8 oneself, to a person holding a license under this chapter, or to any other person or to the public, or  
9 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
10 practice authorized by the license.

11          “ . . . .

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

15          “(l) The conviction of a crime substantially related to the qualifications, functions, and  
16 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
17 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
18 substances or of a violation of the statutes of this state regulating controlled substances or  
19 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
20 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
21 The board may inquire into the circumstances surrounding the commission of the crime, in order  
22 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
23 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
24 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
25 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
26 of this provision. The board may take action when the time for appeal has elapsed, or the  
27 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
28 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of

1 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
2 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
3 indictment.

4 "...."

#### 5 REGULATORY PROVISIONS

6 10. California Code of Regulations, title 16, section 1769, states:

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

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

12 "(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under  
13 consideration as grounds for denial under Section 480 of the Business and Professions Code.

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

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

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

19 "(b) When considering the suspension or revocation of a facility or a personal license on the  
20 ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating  
21 the rehabilitation of such person and his present eligibility for a license will consider the  
22 following criteria:

23 "(1) Nature and severity of the act(s) or offense(s).

24 "(2) Total criminal record.

25 "(3) The time that has elapsed since commission of the act(s) or offense(s).

26 "(4) Whether the licensee has complied with all terms of parole, probation, restitution or  
27 any other sanctions lawfully imposed against the licensee.

28 "(5) Evidence, if any, of rehabilitation submitted by the licensee."

1 11. California Code of Regulations, title 16, section 1770, states:

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

8 **FIRST CAUSE FOR DENIAL OF APPLICATION**

9 (July 7, 2006, Convictions for DUI on March 30, 2006)

10 12. Respondent's application is subject to denial under sections 480, subdivisions (a) (1)  
11 and (a) (3), and 4301, subdivision (l) of the Code, in that Respondent was convicted of a crime  
12 that is substantially related to the qualifications, functions, and duties of a pharmacy technician.  
13 The circumstances are as follows:

14 12. On or about July 7, 2006, in a criminal proceeding entitled *The People of the State of*  
15 *California v. Paul Spivey Smith Jr.*, Riverside Superior Court case number RIM474140,  
16 Respondent was convicted of violating Vehicle Code section 23152, subdivision (a), driving a  
17 vehicle while under the influence of alcohol; and Vehicle Code section 23152, subdivision (b),  
18 driving a vehicle while having a blood alcohol content (BAC) in excess of .08 percent.

19 **SECOND CAUSE FOR DENIAL OF APPLICATION**

20 (August 28, 2009, Convictions for DUI on February 21, 2009)

21 13. Respondent's application is subject to denial under sections 480, subdivisions (a) (1)  
22 and (a) (3), and 4301, subdivision (l) of the Code, in that Respondent was convicted of a crime  
23 that is substantially related to the qualifications, functions, and duties of a pharmacy technician.  
24 The circumstances are as follows:

25 14. On or about August 28, 2009, in a criminal proceeding entitled *People of the State of*  
26 *California v. Paul Spivey Smith Jr. aka Paul Spivey Smith*, in Orange County Superior Court,  
27 Central Justice Center case number 09CM02645, Respondent was convicted on his plea of guilty  
28 of violating Vehicle Code section 23152, subdivision (a), driving a vehicle while under the

1 influence of alcohol; and Vehicle Code section 23152, subdivision (b), driving a vehicle while  
2 having a BAC in excess of .08 percent (.13 percent) with an enhancement for one prior  
3 conviction, both misdemeanors.

4 15. The facts that led to the convictions are that on February 21, 2009, Respondent was  
5 pulled over by a City of Orange Police officer for having a burnt out headlight and expired  
6 registration tags. The officer noticed that Respondent had symptoms of alcohol intoxication  
7 including bloodshot/watery eyes, a strong odor of alcohol emanating from his person and slurred  
8 speech. The officer administered Preliminary Alcohol Screening (PAS) tests that resulted in  
9 readings on .134 percent BAC and .125 percent BAC. Respondent was arrested for driving under  
10 the influence of alcohol. Respondent also agreed to and was administered a blood test that  
11 resulted in a BAC result of 0.13 percent.

12 16. As a result of the convictions, Respondent was sentenced to 5 years of informal  
13 probation and ordered to serve 60 days in Orange County Jail, with credit for 3 days served,  
14 violate no law, pay various fines and fees, attend and complete an 18 month multiple offender  
15 alcohol program, and attend and complete Mothers Against Drunk Driving (MADD) Victim  
16 Impact Panel program.

### 17 **THIRD CAUSE FOR DENIAL OF APPLICATION**

#### 18 **(Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)**

19 17. Respondent's application is subject to denial under section 480, subdivision (a)(3),  
20 and section 4301, subdivision (h) of the Code in that on or about March 30, 2006 and  
21 February 21, 2009, as described in the First and Second Causes for Denial of Application, above,  
22 Respondent used alcoholic beverages to an extent or in a manner that was potentially dangerous  
23 or injurious to himself and to others in that he operated a motor vehicle while impaired by  
24 alcohol. Such unprofessional conduct posed a significant threat to public safety.

### 25 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

#### 26 **(Unprofessional Conduct - Conviction of Alcohol-Related Criminal Offenses)**

27 18. Respondent's application is subject to denial under section 480, subdivision (a) (3),  
28 and section 4301, subdivision (k) of the Code in that Respondent has been convicted of two or

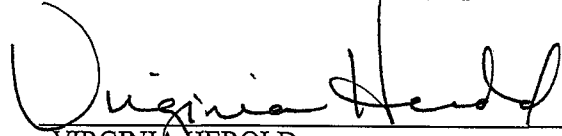
1 more misdemeanors involving the use of alcoholic beverages, as described in the First and  
2 Second Causes for Denial of Application, above.

3 **PRAYER**

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

- 6 1. Denying the application of Paul Spivey Smith for a pharmacy technician;  
7 2. Taking such other and further action as deemed necessary and proper.

8  
9 DATED: 8/16/11



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

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