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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues
11 Against:

12 **JOEL A. PRISET**

13
14 Respondent.
15

Case No. 4215

OAH No. 2012080656

**FIRST AMENDED
STATEMENT OF ISSUES**

16
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia K. Herold (Complainant) brings this First Amended Statement of Issues
20 solely in her official capacity as the Executive Officer of the Board of Pharmacy. This First
21 Amended Statement of Issues supersedes and replaces the Statement of Issues filed on or about
22 July 10, 2012.

23 2. On or about March 22, 2011, the Board of Pharmacy (Board) received an application
24 for a Pharmacy Technician Registration from Joel A. Priset (Respondent). On or about
25 March 17, 2011, Respondent certified under penalty of perjury to the truthfulness of all
26 statements, answers, and representations in the application. The Board denied the application on
27 October 17, 2011.

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1 **JURISDICTION**

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

5 **STATUTORY PROVISIONS**

6 4. Section 480 states, in pertinent part:

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

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

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

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

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

22 5. Section 490 states, in pertinent part:

23 "(a) In addition to any other action that a board is permitted to take against a licensee, a
24 board may suspend or revoke a license on the ground that the licensee has been convicted of a
25 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
26 or profession for which the license was issued.

27 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
28 discipline a licensee for conviction of a crime that is independent of the authority granted under

1 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
2 of the business or profession for which the licensee's license was issued.

3 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
4 conviction following a plea of nolo contendere. Any action that a board is permitted to take
5 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
6 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
7 made suspending the imposition of sentence, irrespective of a subsequent order under the
8 provisions of Section 1203.4 of the Penal Code. "

9 6. Section 4060 states, in pertinent part:

10 "No person shall possess any controlled substance, except that furnished to a person upon
11 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
12 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
13 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician
14 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
15 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the
16 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
17 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-
18 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled
19 with the name and address of the supplier or producer. "

20 7. Section 4300 provides in pertinent part, that every license issued by the Board is
21 subject to discipline, including suspension or revocation.

22 8. Section 4300, subsection (c), provides in pertinent part, that the Board "may refuse a
23 license to any applicant guilty of unprofessional conduct."

24 9. Section 4301 states, in pertinent part:

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

28

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

4

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

10

11 (i) The violation of any of the statutes of this state, or any other state, or of the United
12 States regulating controlled substances and dangerous drugs.

13

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

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.

3

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

8 "(p) Actions or conduct that would have warranted denial of a license."

9 10. Health and Safety Code section 11350, subdivision (a), states:

10 "Except as otherwise provided in this division, every person who possesses (1) any
11 controlled substance specified in subdivision (b) or (c), or paragraph (1) of
12 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
13 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
14 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
15 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
16 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to
17 practice in this state, shall be punished by imprisonment pursuant to subdivision (h)
18 of Section 1170 of the Penal Code."

19 11. Health and Safety Code section 11550, subdivision (a), states:

20 "No person shall use, or be under the influence of any controlled substance which is
21 (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of
22 Section 11054, specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d)
23 of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in
24 paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) of
25 Section 11055, or (2) a narcotic drug classified in Schedule III, IV, or V, except
26 when administered by or under the direction of a person licensed by the state to
27 dispense, prescribe, or administer controlled substances..."

28 REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 1770 states, in pertinent part:

"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

1 consistent with the public health, safety, or welfare."

2 **CONTROLLED SUBSTANCE**

3 13. "Marijuana," is a schedule I controlled substance as defined in Health and Safety
4 Code section 11054, subdivision (d)(13), and is categorized a dangerous drug pursuant to section
5 4022.

6 14. "Alprazolam" (Xanax), is a schedule IV controlled substance as defined in Health
7 and Safety Code section 11057, subdivision (d)(1), and is categorized a dangerous drug pursuant
8 to section 4022.

9 **FIRST CAUSE FOR DENIAL OF APPLICATION**

10 **(Conviction of a Crime)**

11 15. Respondent's application is subject to denial under section 480, subdivision (a)(1), in
12 that Respondent was convicted of a crime. On or about May 6, 2010, after pleading guilty,
13 Respondent was convicted of one misdemeanor count of violating Penal Code section 594,
14 subdivision (b)(1) [vandalism: \$400 or more] in the criminal proceeding entitled *The People of*
15 *the State of California v. Joel Addison Priset* (Super. Ct. San Bernardino County, 2010, No.
16 MVI1000800). The court sentenced Respondent to serve one day in San Bernardino County Jail
17 and ordered pronouncement of judgment withheld and conditional and revocable release granted
18 for a period of 36 months, with terms and conditions. The circumstances surrounding the
19 conviction are that on or about March 3, 2010, Respondent was found by the San Bernardino
20 Sheriff's Department tagging a fence with a spray can. During a search of Respondent's vehicle,
21 the officer found a backpack that contained a sandwich baggie with marijuana and a medium size
22 ball glass jar with a large amount of marijuana inside of it. When asked who the marijuana
23 belonged to, Respondent admitted it was his. When the officer asked Respondent if he had a
24 medical marijuana card, he indicated he did and that it was somewhere in the vehicle. The officer
25 searched the vehicle but did not find the card. Respondent was subsequently arrested for
26 violating Penal Code section 594, subdivision (b) [vandalism] and Health and Safety Code
27 section 11360, subdivision (a) [transportation of marijuana].

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1 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

2 **(Acts Warranting Discipline of Licensure)**

3 18. Respondent's application is subject to denial under section 4301, subdivision (p) and
4 section 480, subdivisions (a)(3)(A) and (a)(3)(B), in that Respondent committed acts which if
5 done by a licentiate of the business and profession in question, would be grounds for suspension
6 or revocation of his license as follows:

7 a. Conviction of a substantially related crime. On or about May 6, 2010, Respondent
8 was convicted of a crime substantially related to the qualifications, functions, or duties of a
9 pharmacy technician which to a substantial degree evidence his present or potential unfitness to
10 perform the functions authorized by his license in a manner consistent with the public health,
11 safety, or welfare, in violation of sections 4031, subdivision (l), and 490, in conjunction with
12 California Code of Regulations, title 16, section 1770. Complainant refers to, and by this
13 reference incorporates, the allegations set forth above in paragraph 15, as though set forth fully.


14 b. Acts involving moral turpitude, dishonesty, fraud, or deceit. On or about March 3,
15 2010, Respondent committed acts involving moral turpitude, dishonesty, fraud, or deceit in
16 violation of section 4301, subdivision (f). Complainant refers to, and by this reference
17 incorporates, the allegations set forth above in paragraph 15, as though set forth fully.

18 **PRAYER**

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

- 21 1. Denying the application of Respondent for a Pharmacy Technician Registration; and
22 2. Taking such other and further action as deemed necessary and proper.

23 DATED: 10/31/12

24 
25 VIRGINIA K. HEROLD
26 Executive Officer
27 Board of Pharmacy
28 State of California
Complainant

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