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

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

Case No. 4297

13 **JOEL PATRICK FLYNN**

STATEMENT OF ISSUES

14 **Pharmacy Technician License Applicant**

15 Respondent.

16
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 August 25, 2011, the Board of Pharmacy, Department of Consumer
22 Affairs, received an application for a Pharmacy Technician License from Joel Patrick Flynn
23 (Respondent). On or about August 22, 2011, Joel Patrick Flynn certified under penalty of perjury
24 to the truthfulness of all statements, answers, and representations in the application. The Board
25 denied the application on December 15, 2011.

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JURISDICTION

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

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

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

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

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

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

"(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.

(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".

6. Section 480 of the Code states:

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

"(1) Been convicted of a crime. A conviction within the meaning of this

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

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

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

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

14 "(b) Notwithstanding any other provision of this code, no person shall be
15 denied a license solely on the basis that he or she has been convicted of a felony if he
16 or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing
17 with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
18 convicted of a misdemeanor if he or she has met all applicable requirements of the
19 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
20 person when considering the denial of a license under subdivision (a) of Section 482.

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

24 FIRST CAUSE FOR DENIAL OF APPLICATION

25 (Conviction of a crime)

26 7. Respondent's application is subject to denial under section 480 subd. (a) (1) and 4301
27 (1) in that on or about August 27, 1987, in a criminal proceeding entitled *People v. Joel Patrick*
28 *Flynn* in San Joaquin Superior Court, Case Number ST020207, Respondent was convicted by -
plea of guilty of a violation of Vehicle Code section 23152 (driving under the influence with
.08% or higher of alcohol).

29 SECOND CAUSE FOR DENIAL OF APPLICATION

30 (Act which if done by licensee would subject him to discipline)

31 8. Respondent's application is subject to denial under section 480 subd. (a) (3) in
32 conjunction with Section 4301 subds. (h) and (j). The circumstances are as follows:

33 a. On or about August 19, 2009, respondent was stopped by Stockton police for
34 riding a bicycle without a light. The officer conducted a pat down and found suspected
35 methamphetamine, a controlled substance. The officer reported respondent's statements as

1 follows:

2 Flynn said that he used to use methamphetamine a long time ago. Flynn said he was clean
3 and sober for about 5 years, but that he started using again a couple of months ago. Flynn said he
4 had been using methamphetamine daily for the last week. He uses approximately \$20 a day.
5 Flynn said he would normally snort the methamphetamines. He does not smoke it or inject it.

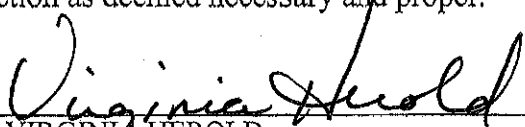
6 b. On or about October 20, 2009, respondent was stopped by Stockton Police for a
7 traffic violation and was found to be driving on a suspended license. Police found
8 methamphetamine when they conducted a search of the vehicle. When asked by police if his
9 friends left something illegal in the vehicle respondent stated, "there's some dope behind the
10 seat."
11

12 PRAYER

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

- 15 1. Denying the application of Joel Patrick Flynn for a Pharmacy Technician License;
16 2. Taking such other and further action as deemed necessary and proper.
17

18 DATED: 1/7/13


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

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