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

11 In the Matter of the Statement of Issues
Against:
12 **REBECCA JO SPEER**
13
14 Pharmacy Technician Registration Applicant
15 Respondent.

Case No. 4309

STATEMENT OF ISSUES

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
21 Affairs ("Board").

22 2. On or about May 18, 2011, the Board received an application for a Pharmacy
23 Technician Registration from Rebecca Jo Speer ("Respondent"). On or about May 12, 2011,
24 Rebecca Jo Speer certified under penalty of perjury to the truthfulness of all statements, answers,
25 and representations in the application. The Board denied the application on February 14, 2012.

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1 JURISDICTION

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

5 4. Code section 4300, subdivision (c), states, in pertinent part:

6 "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. . . ."

9 5. Code section 4300.1 states, in pertinent part:

10 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
11 operation of law or by order or decision of the board or a court of law, the placement of a license
12 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
13 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
14 proceeding against, the licensee or to render a decision suspending or revoking the license."

15 STATUTORY PROVISIONS

16 6. Code section 480 states, in pertinent part:

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

19
20 "(3) (A) Done any act that if done by a licentiate of the business or profession in question,
21 would be grounds for suspension or revocation of license.

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

25 7. Code section 4301 states, in pertinent part:

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

1
2 "(j) The violation of any of the statutes of this state, or any other state, or of the United
3 States regulating controlled substances and dangerous drugs."

4 **DRUG STATUTES**

5 8. Health and Safety Code section 11007 states:

6 "Controlled substance," unless otherwise specified, means a drug, substance, or immediate
7 precursor which is listed in any schedule in Section 11054, 11055, 11056, 11057, or 11058."

8 9. Health and Safety Code section 11359 states:

9 "Every person who possesses for sale any marijuana, except as otherwise provided by law,
10 shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal
11 Code."

12 10. United States Code, title 21, section 812 states, in pertinent part:

13 "(a) Establishment. There are established five schedules of controlled substances, to be
14 known as schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances
15 listed in this section. . . .

16 "(b) Placement on schedules; findings required. Except where control is required by United
17 States obligations under an international treaty, convention, or protocol, in effect on the effective
18 date of this part, and except in the case of an immediate precursor, a drug or other substance may
19 not be placed in any schedule unless the findings required for such schedule are made with respect
20 to such drug or other substance. The findings required for each of the schedules are as follows:

21 "(1) SCHEDULE I.

22 "(A) The drug or other substance has a high potential for abuse.

23 "(B) The drug or other substance has no currently accepted medical use in
24 treatment in the United States.

25 "(C) There is a lack of accepted safety for use of the drug or other substance under
26 medical supervision."

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1 11. United States Code, title 21, section 841 states, in pertinent part:

2 "(a) Unlawful acts. Except as authorized by this title, it shall be unlawful for any person
3 knowingly or intentionally--

4 "(1) to manufacture, distribute, or dispense, or possess with intent to manufacture,
5 distribute, or dispense, a controlled substance; . . ."

6 12. United States Code, title 21, section 844 states, in pertinent part:

7 "(a) Unlawful acts; penalties. It shall be unlawful for any person knowingly or
8 intentionally to possess a controlled substance unless such substance was obtained directly, or
9 pursuant to a valid prescription . . ."

10 **REGULATORY PROVISION**

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

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

18 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

19 14. Marijuana is a hallucinogenic Schedule I controlled substance under State and federal
20 law (Health & Saf. Code § 11054 subd. (d)(13); and 21 U.S.C. § 812.) Marijuana is also a
21 dangerous drug as defined in Code section 4022.

22 **FIRST CAUSE FOR DENIAL OF APPLICATION**

23 **(Violating Laws Regulating Controlled Substances/Dangerous Drugs)**

24 15. Respondent's application is subject to denial under Code sections 4300, subdivision
25 (c) and 4301, subdivision (j), on the grounds of unprofessional conduct, in that on or about March
26 31, 2011, Respondent violated California and federal law regulating controlled substances and
27 dangerous drugs by violating Health and Safety Code section 11359, subdivision (a), and United
28 States Code, title 21, section 841, subdivision (a)(1) regulating the sale of marijuana and United

1 States Code, title 21, section 844, subdivision (a) regulating the possession of marijuana. The
2 circumstances are that on or about March 31, 2011, Respondent was in a public parking lot,
3 standing next to her vehicle, and was in possession of 26.5 grams of marijuana and a digital scale.

4 **SECOND CAUSE FOR DENIAL OF APPLICATION**

5 **(Acts Warranting Denial of License)**

6 16. Respondent's application is subject to denial under Code sections 480, subdivision
7 (a)(3)(A) and 4301 in that on or about March 31, 2011, Respondent committed an act which if
8 done by a licensed pharmacy technician would be grounds for suspension or revocation of her
9 license, as follows:

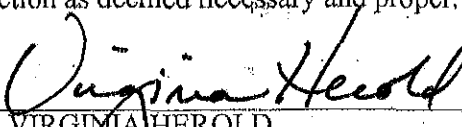
10 (a) Respondent committed an act that is substantially related to the qualifications,
11 functions, or duties of registered pharmacy technician which to a substantial degree evidences her
12 present or potential unfitness to perform the functions authorized by the license in a manner
13 consistent with the public, safety, or welfare in violation of Code section 4301 and California
14 Code of Regulations, title 16, section 1770 when she was in a public parking lot, standing next to
15 her vehicle, and was in possession of 26.5 grams of marijuana and a digital scale.

16 **PRAYER**

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

- 19 1. Denying the application of Rebecca Jo Speer for a Pharmacy Technician Registration;
20 and
21 2. Taking such other and further action as deemed necessary and proper.

22 DATED: 5/28/15


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

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