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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: Case No. 4373

12 **JOSEPH JAMES BOITANO**

13 Respondent. **STATEMENT OF ISSUES**

14  
15  
16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about November 29, 2011, the Board of Pharmacy, Department of Consumer  
21 Affairs received an application for a Pharmacy Technician registration from Joseph James  
22 Boitano (Respondent). On or about November 21, 2011, Joseph James Boitano certified under  
23 penalty of perjury to the truthfulness of all statements, answers, and representations in the  
24 application. The Board denied the application on May 7, 2012.

25 **JURISDICTION**

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

1 4. Section 4300 of the Code states:

2 (a) Every license issued may be suspended or revoked.

3 ...

4 (c) The board may refuse a license to any applicant guilty of  
unprofessional conduct. The board may, in its sole discretion, issue a probationary  
5 license to any applicant for a license who is guilty of unprofessional conduct and who  
has met all other requirements for licensure. . . .

6 **STATUTORY PROVISIONS**

7 5. Section 4301 of the Code states:

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

11 ...

12 (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.

13 ...

14 (l) The conviction of a crime substantially related to the qualifications,  
15 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  
16 States Code regulating controlled substances or of a violation of the statutes of this  
state regulating controlled substances or dangerous drugs shall be conclusive  
17 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  
18 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  
19 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  
20 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  
21 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  
22 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  
23 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or  
dismissing the accusation, information, or indictment.

24 6. Section 480 of the Code states:

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

27 (1) Been convicted of a crime. A conviction within the meaning of this  
28 section means a plea or verdict of guilty or a conviction following a plea of nolo  
contendere. Any action that a board is permitted to take following the establishment

1 of a conviction may be taken when the time for appeal has elapsed, or the judgment  
2 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  
the provisions of Section 1203.4 of the Penal Code.

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

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

7  
8 (b) Notwithstanding any other provision of this code, no person shall be  
denied a license solely on the basis that he or she has been convicted of a felony if he  
or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing  
9 with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been  
convicted of a misdemeanor if he or she has met all applicable requirements of the  
10 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a  
person when considering the denial of a license under subdivision (a) of Section 482.

11 ...  
12 7. Section 4060 of the Code states:

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

### 21 FIRST CAUSE FOR DENIAL OF APPLICATION

#### 22 (Criminal Conviction)

23 8. Respondent's application is subject to denial for unprofessional conduct under section  
24 4300, subsection (c) as defined in section 4301, subsection (l) and 480, subsection (a)(1) in that  
Respondent has the following convictions:

25 a. On or about March 10, 2010, in a criminal proceeding entitled *People of the State of*  
26 *California vs. Joseph J. Boitano* in Amador County Superior Court, Case Number 08CR14098,  
27 Respondent was convicted by his plea of guilty for violating Vehicle Code Section 23222(b)  
28

1 (driving while in possession of marijuana), a misdemeanor. On July 10, 2008, Respondent was  
2 granted Deferred Entry of Judgment for a period of 18 months. On or about March 10, 2010,  
3 Respondent was sentenced due to non-compliance with his Deferred Entry of Judgment program,  
4 including failing to pay fines and fees and failing to complete a drug counseling program.  
5 Respondent's driver's license was suspended for 12 months and he was ordered to pay fines and  
6 fees. The circumstances of the crime were as follows: On or about April 11, 2008, Respondent  
7 was pulled over by Jackson Police Department for lack of registration tabs on his license plate.  
8 The officer smelled an odor of marijuana and discovered approximately 4 grams of marijuana in  
9 the front seat. Respondent was cited and released.

10 b. On July 26, 2010, in a criminal proceeding entitled *People of the State of California*  
11 *vs. Joseph J. Boitano* in Alpine County Superior Court, Case Number A100538, Respondent  
12 plead Guilty<sup>1</sup> to violating Health and Safety Code section 11377(a), possession of a controlled  
13 substance, to wit: ecstasy, a substance containing methamphetamine, a felony. The circumstances  
14 of the crime are as follows: On or about March 24, 2010, a confidential informant with the  
15 Alpine County Sheriff's Office purchased ecstasy pills from Respondent.

## 16 SECOND CAUSE FOR DENIAL OF APPLICATION

### 17 (Acts Done by Licentiate)

18 9. Respondent's application is subject to denial under section 480, subsection (a)(3)(A)  
19 for violation of section 4301, subsection (j) in that Respondent violated Health and Safety Code  
20 section 11377(a), and Business and Professions Code section 4060, statues regulating controlled  
21 substances, as more fully set forth in paragraph 8, above.

### 22 PRAYER

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

25 1. Denying the application of Joseph James Boitano for a Pharmacy Technician  
26 registration;

27 \_\_\_\_\_  
28 <sup>1</sup> Respondent's court conviction was subsequently dismissed pursuant to Proposition 36.

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

DATED: 11/19/12



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

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