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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. 4425

13 **AUSTIN DANE CHRISTENSEN**

STATEMENT OF ISSUES

14 Respondent.

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 February 9, 2012, the Board of Pharmacy ("Board") received an
21 application for registration as a Pharmacy Technician from Austin Dane Christensen
22 ("Respondent"). On or about February 4, 2012, Respondent certified under penalty of perjury to
23 the truthfulness of all statements, answers, and representations in the application. The Board
24 denied the application on July 3, 2012.

25 **JURISDICTION**

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

1 STATUTORY AND REGULATORY PROVISIONS

2 4. Section 480 states, in pertinent part:

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

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

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

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

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

18 5. Section 490 states, in pertinent part:

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

23 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
24 discipline a licensee for conviction of a crime that is independent of the authority granted under
25 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
26 of the business or profession for which the licensee's license was issued.

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

1 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
2 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
3 made suspending the imposition of sentence, irrespective of a subsequent order under the
4 provisions of Section 1203.4 of the Penal Code."

5 6. Section 4300 states, in pertinent part:

6 "(a) Every license issued may be suspended or revoked;

7 ...

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

9 7. Section 4301 states, in pertinent part:

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

13

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

19

20 "(l) The conviction of a crime substantially related to the qualifications, functions, and
21 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
22 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
23 substances or of a violation of the statutes of this state regulating controlled substances or
24 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
25 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
26 The board may inquire into the circumstances surrounding the commission of the crime, in order
27 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
28 or dangerous drugs, to determine if the conviction is of an offense substantially related to the

1 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
2 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
3 of this provision. The board may take action when the time for appeal has elapsed, or the
4 judgment of conviction has been affirmed on appeal or when an order granting probation is made
5 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
6 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
7 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
8 indictment.

9

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

11 8. 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 **FIRST CAUSE FOR DENIAL OF APPLICATION**

19 **(Convictions of Crimes)**

20 9. Respondent's application is subject to denial under Code section 480, subdivision
21 (a)(1), in that Respondent was convicted of crimes as follows:

22 a. On or about October 27, 2009, after pleading nolo contendere Respondent was
23 convicted of one misdemeanor count of violating Vehicle Code section 23103, subdivision (a)
24 [reckless driving] in the criminal proceeding entitled *The People of the State of California v.*
25 *Austin Dane Christensen* (Super. Ct. San Luis Obispo County, 2010, No. M000436798). The
26 court placed Respondent on 18 months probation, with terms and conditions. The circumstances
27 surrounding the conviction are that on or about August 15, 2009, the San Luis Obispo Police
28 Department contacted Respondent during an investigation of a traffic collision involving a

1 wooden pole. When asked if he had been in a traffic collision, Respondent admitted to hitting
2 something on the road but only remembered a bright light or spark. He also admitted to driving
3 after consuming alcohol at a local bar and taking cold medication during the day and evening. In
4 addition, Respondent admitted to smoking Marijuana prior to going to the bar.

5 b. On or about December 15, 2005, after pleading nolo contendere, Respondent was
6 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a)
7 [driving under the influence of alcohol or drugs] in the criminal proceeding entitled *The People of*
8 *the State of California v. Austin Dane Christensen* (Super. Ct. San Luis Obispo County, 2005,
9 No. M000381760). The Court sentenced Respondent to serve 2 days in San Luis Obispo County
10 Jail and placed him on 3 years probation, with terms and conditions. The circumstances
11 surrounding the conviction are that on or about December 13, 2005, the Pismo Beach Police
12 Department pulled Respondent over during a routine traffic stop. While speaking to Respondent,
13 the officer detected a strong odor of an alcoholic beverage emitting from his breath and person.
14 Respondent was observed to have bloodshot, watery eyes and his speech was slow and slurred.
15 Respondent was subsequently arrested for violating Vehicle Code Section 23152, subdivision (a)
16 [driving under the influence of alcohol or drugs] and Vehicle Code Section 23152, subdivision (b)
17 [driving while having 0.08% or more, by weight, of alcohol in his blood]. During the booking
18 procedure, Respondent submitted to a blood test that resulted in a blood alcohol content level of
19 0.11%.

20 SECOND CAUSE FOR DENIAL OF APPLICATION

21 (Acts Warranting Denial of Licensure)

22 10. Respondent's application is subject to denial under Code sections 4301, subdivision
23 (p), and 480, subdivision (a)(3)(A) and (a)(3)(B), in that Respondent committed acts which if
24 done by a licentiate would be grounds for suspension or revocation of his license, as follows:

25 a. Respondent was convicted of crimes substantially related to the qualifications,
26 functions, or duties of a pharmacy technician which to a substantial degree evidence his present
27 or potential unfitness to perform the functions authorized by his license in a manner consistent
28 with the public health, safety, or welfare, in violation of sections 4301, subdivision (l) and 490, in

1 conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,
2 and by this reference incorporates, the allegations set forth above in paragraph 9, subparagraphs
3 (a) and (b), inclusive, as though fully set forth herein.

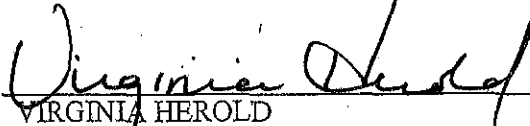
4 b. Respondent used alcoholic beverages to an extent or in a manner dangerous or
5 injurious to himself, another person, or the public in violation of section 4301, subdivision (h).
6 Complainant refers to, and by this reference incorporates, the allegations set forth above in
7 paragraph 9, subparagraphs (a) and (b), inclusive, as though fully set forth herein.

8 PRAYER

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

- 11 1. Denying the application of Respondent Austin Dane Christensen for Registration as a
12 Pharmacy Technician; and
13 2. Taking such other and further action as deemed necessary and proper.

14 DATED: 11/19/12



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

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