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

11 In the Matter of the Statement of Issues Against:

Case No. 4484

12 **JENNIFER CRISTINE NEWTON**
13 **aka JENNIFER CRISTINE WACHTA**
aka JENNIFER CRISTINE RAMOS

STATEMENT OF ISSUES

14 **Pharmacy Technician Registration Applicant**

15 Respondent.

16
17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about November 14, 2011, the Board of Pharmacy, Department of Consumer
23 Affairs received an application for a Pharmacy Technician Registration from Jennifer Cristine
24 Newton (Respondent). On or about October 31, 2011, Jennifer Cristine Newton certified under
25 penalty of perjury to the truthfulness of all statements, answers, and representations in the
26 application. The Board denied the application on August 30, 2012.

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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 (Code) unless otherwise indicated.

4. Section 4300, subdivision (c) of the Code states, in pertinent part, that the Board may refuse a license to any applicant guilty of unprofessional conduct.

5. Section 475 of the Code states, in pertinent part:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

....

(2) Conviction of a crime.

....

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

....

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

STATUTORY PROVISIONS

6. Section 480 states, in pertinent part:

(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 section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code.

....

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

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

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

9

10 7. Section 482 of the Code states:

11 Each board under the provisions of this code shall develop criteria to evaluate
the rehabilitation of a person when:

12 (a) Considering the denial of a license by the board under Section 480; or

13 (b) Considering suspension or revocation of a license under Section 490.

14 Each board shall take into account all competent evidence of rehabilitation
15 furnished by the applicant or licensee.

16 8. Section 4022 of the Code states:

17 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
self-use, except veterinary drugs that are labeled as such, and includes the following:

18 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
19 without prescription," "Rx only," or words of similar import.

20 (b) Any device that bears the statement: "Caution: federal law restricts this
device to sale by or on the order of a _____," "Rx only," or words of similar
21 import, the blank to be filled in with the designation of the practitioner licensed to use
or order use of the device.

22 (c) Any other drug or device that by federal or state law can be lawfully
23 dispensed only on prescription or furnished pursuant to Section 4006.

24 9. Section 4140 of the Code states:

25 No person shall possess or have under his or her control any hypodermic needle
or syringe except when acquired in accordance with this article.

10. Section 4301 of the Code states:

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:

....

(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.

....

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

REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1769 states:

(a) When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

1 (4) Whether the applicant has complied with any terms of parole, probation,
2 restitution or any other sanctions lawfully imposed against the applicant.

3 (5) Evidence, if any, of rehabilitation submitted by the applicant.

4

5 12. California Code of Regulations, title 16, section 1770 states:

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

13 CAUSE FOR DENIAL OF APPLICATION

14 **(January 2, 2007 Criminal Conviction for Illegal Possession of a Hypodermic Needle 15 on January 28, 2006)**

16 13. Respondent's application for registration as a pharmacy technician is subject to denial
17 under section 480, subdivision (a)(1), and 4301, subdivision (l), of the Code in that she was
18 convicted of a crime that is substantially related to the qualifications, duties, and functions of a
19 pharmacy technician. The circumstances are as follows:

20 14. On or about January 2, 2007, in a criminal proceeding entitled *People of the State of*
21 *California v. Jennifer Cristine Newton, aka Jennifer Cristine Wachta*, in the Superior Court of
22 California, County of Riverside, in Case Number RIM473702, Respondent was convicted on her
23 plea of guilty of violating Business and Professions Code section 4140 (possession of a
24 hypodermic needle/syringe), a misdemeanor. As a result of a plea agreement, a count for
25 violating Penal Code section 853.7 (failure to appear on a written promise), a misdemeanor, was
26 dismissed.

27 15. As a result of the conviction, the Court placed Respondent on probation for 3 years
28 and ordered her to serve one day in the Riverside County Jail, pay various fines and fees, and
submit person, automobile, residence, garage, storage areas, and personal or leased property to
search and seizure for the detection of hypodermic needles.

16. The circumstances surrounding the conviction are that on January 28, 2006, at approximately 10:00 p.m., Riverside Police Department Officers observed a red Nissan Sentra traveling without its headlights on in violation of the Vehicle Code and initiated a traffic stop. Officers contacted the driver who displayed symptoms of being under the influence of stimulants. The driver of the vehicle told officers that he had used methamphetamine earlier that day and informed officers that the vehicle belonged to his girlfriend (Respondent), that there was drug paraphernalia in the vehicle, and that the drug paraphernalia belonged to Respondent. Officers contacted Respondent via cell phone and Respondent told officers that there were needles in the trunk of the car along with "the other stuff" and that the items belonged to her. Respondent arrived at the scene of the traffic stop a few minutes later and verified the vehicle belonged to her. Officers opened the trunk of the vehicle and found a small black bag which contained three empty hypodermic needles. Respondent told officers the needles belonged to her and told officers that she had had a drug problem for the past 14 years.

PRAAYER

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

1. Denying the application of Jennifer Cristine Newton, aka Jennifer Christine Wachta,
aka Jennifer Cristine Ramos, for a Pharmacy Technician Registration;

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

DATED:

4/19/13

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

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