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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  
12 Against:  
13 **DAWN NICHOLE NYBLADE**  
14 **Pharmacy Technician Registration**  
15 **Applicant**  
16 Respondent.

Case No. 4675  
**STATEMENT OF ISSUES**

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 August 31, 2012, the Board of Pharmacy, Department of Consumer  
23 Affairs received an application for a Pharmacy Technician Registration from Dawn Nichole  
24 Nyblade (Respondent). Respondent is also known as Dawn Nicole Scott, and Dawn Nichole  
25 Scott. On or about August 3, 2012, Dawn Nichole Nyblade certified under penalty of perjury to  
26 the truthfulness of all statements, answers, and representations in the application. The Board  
27 denied the application on January 30, 2013.

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1 **JURISDICTION**

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

5 4. Section 4300 of the Code provides, in pertinent part, that the Board may refuse a  
6 license to any applicant guilty of unprofessional conduct. The Board may, in its sole discretion,  
7 issue a probationary license to any applicant for a license who is guilty of unprofessional conduct  
8 and who has met all other requirements for licensure.

9 **STATUTORY PROVISIONS**

10 5. Section 475 of the Code states:

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

13 (1) Knowingly making a false statement of material fact, or knowingly  
14 omitting to state a material fact, in an application for a license.

15 (2) Conviction of a crime.

16 (3) Commission of any act involving dishonesty, fraud or deceit with the  
17 intent to substantially benefit himself or another, or substantially injure another.

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

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

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

26 6. Section 480 of the Code states:

27 (a) A board may deny a license regulated by this code on the grounds that the  
28 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 that 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 (2) Done any act involving dishonesty, fraud, or deceit with the intent to  
2 substantially benefit himself or herself or another, or substantially injure another.

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

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

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

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

18 7. Section 482 of the Code states:

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

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

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

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

25 8. Section 493 of the Code states:

26 Notwithstanding any other provision of law, in a proceeding conducted by a  
27 board within the department pursuant to law to deny an application for a license or to  
28 suspend or revoke a license or otherwise take disciplinary action against a person who  
holds a license, upon the ground that the applicant or the licensee has been convicted  
of a crime substantially related to the qualifications, functions, and duties of the  
licensee in question, the record of conviction of the crime shall be conclusive  
evidence of the fact that the conviction occurred, but only of that fact, and the board  
may inquire into the circumstances surrounding the commission of the crime in order  
to fix the degree of discipline or to determine if the conviction is substantially related  
to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority,"  
and "registration."

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1           9.    Section 4301 of the Code states:

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

6           .....

7           (f) The commission of any act involving moral turpitude, dishonesty, fraud,  
8 deceit, or corruption, whether the act is committed in the course of relations as a  
9 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

10           (g) Knowingly making or signing any certificate or other document that falsely  
11 represents the existence or nonexistence of a state of facts.

12           .....

13           (j) The violation of any of the statutes of this state, or any other state, or of the  
14 United States regulating controlled substances and dangerous drugs.

15           (k) The conviction of more than one misdemeanor or any felony involving the  
16 use, consumption, or self-administration of any dangerous drug or alcoholic beverage,  
17 or any combination of those substances.

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

.....

10.   Section 4022 of the Code states

"Dangerous drug" or "dangerous device" means any drug or device unsafe for  
self-use in humans or animals, and includes the following:

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

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

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

7 11. Section 4059 of the Code states, in pertinent part, that a person may not furnish any  
8 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,  
9 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any  
10 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,  
11 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

### 12 REGULATORY PROVISIONS

13 12. California Code of Regulations, title 16, section 1768 states:

14 (a) Where the board has denied an application for a license, the earliest date on  
15 which the applicant may reapply for a license is one year after the effective date of  
16 the denial.

17 (b) All competent evidence of rehabilitation presented will be considered upon  
18 a reapplication. The board shall use the criteria listed in section 1769 when  
19 considering evidence of rehabilitation.

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

21 (a) When considering the denial of a facility or personal license under Section  
22 480 of the Business and Professions Code, the board, in evaluating the rehabilitation  
23 of the applicant and his present eligibility for licensing or registration, will consider  
24 the following criteria:

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

27 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under  
28 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).

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

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

....

1 14. California Code of Regulations, title 16, section 1770 states:

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

6 **DRUG**

7 15. Methamphetamine is a Schedule II controlled substance as designated by Health and  
8 Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business and  
9 Professions Code section 4022.

10 **FIRST CAUSE FOR DENIAL OF APPLICATION**

11 **(November 6, 1997 Criminal Conviction for Possession of a Hypodermic Needle/Syringe)**

12 16. Respondent's application for registration as a pharmacy technician is subject to denial  
13 under sections 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that she was convicted of a  
14 crime that is substantially related to the qualifications, duties, and functions of a pharmacy  
15 technician, and would be a ground for discipline under section 4301, subdivision (l) of the Code  
16 for a registered pharmacy technician. The circumstances are as follows:

17 a. On or about November 6, 1997, in a criminal proceeding entitled *People of the*  
18 *State of California vs. Dawn Nicole Scott*, in San Diego County Municipal Court (Vista Branch),  
19 case number CN061667, Respondent was convicted of violating Business and Professions Code  
20 section 4140, possession of a hypodermic needle/syringe, a misdemeanor.

21 b. As a result of the conviction, on or about November 6, 1997, Respondent was  
22 sentenced to three days in jail, and granted three years probation.

23 **SECOND CAUSE FOR DENIAL OF APPLICATION**

24 **(November 6, 1997 Criminal Conviction for Possession of a Controlled Substance)**

25 17. Respondent's application for registration as a pharmacy technician is subject to denial  
26 under sections 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that she was convicted of a  
27 crime that is substantially related to the qualifications, duties, and functions of a pharmacy  
28 technician, and would be a ground for discipline under section 4301, subdivision (l) of the Code

1 for a registered pharmacy technician. The circumstances are as follows:

2 a. On or about November 6, 1997, in a criminal proceeding entitled *People of the*  
3 *State of California vs. Dawn Nicole Scott*, in San Diego County Municipal Court (Vista Branch),  
4 case number CN070220, Respondent was convicted of violating Health and Safety Code section  
5 11377, subdivision (a), possession of a controlled substance, a misdemeanor.

6 b. As a result of the conviction, on or about November 6, 1997, Respondent was  
7 sentenced to three days in jail, and granted three years probation.

8 **THIRD CAUSE FOR DENIAL OF APPLICATION**

9 **(February 19, 1999 Criminal Convictions for Manufacturing a Controlled Substance**  
10 **& Child Abuse on December 21, 1998)**

11 18. Respondent's application for registration as a pharmacy technician is subject to denial  
12 under sections 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that she was convicted of  
13 crimes that are substantially related to the qualifications, duties, and functions of a pharmacy  
14 technician, and would be a ground for discipline under section 4301, subdivision (l) of the Code  
15 for a registered pharmacy technician. The circumstances are as follows:

16 a. On or about February 19, 1999, in a criminal proceeding entitled *People of the*  
17 *State of California vs. Dawn Nicole Scott*, in San Diego County Superior Court, case number  
18 CN091378, Respondent was convicted on her plea of guilty to violating Health and Safety Code  
19 section 11377.6, subdivision (a), unlawful manufacturing of a controlled substance, to wit,  
20 methamphetamine (Count 1); and Penal Code section 273a, subdivision (a), child abuse (Count  
21 3), felonies. As a result of the plea agreement, the court dismissed Count 2: possession with  
22 intent to manufacture methamphetamine (Health & Safe. Code, § 11383(c)(1)), and Count 5:  
23 child abuse (Pen. Code, § 273a(a)), as well as special allegations that the offenses were  
24 committed in a structure where a child under 16 was present, in violation of Health and Safety  
25 Code section 11379.7, subdivision (a).

26 b. As a result of the convictions, on or about February 19, 1999, Respondent was  
27 sentenced to the low term of three years in state prison on Count 1, and the low term of two years  
28 in state prison on Count 3. The prison sentences were stayed, and Respondent was committed to

1 the custody of the sheriff for 270 days, with credit for 90 days. Respondent was granted three  
2 years formal probation, and ordered to comply with felony probation terms including  
3 requirements to complete a drug counseling program and residential drug treatment (if ordered),  
4 submit to drug tests, attend self-help meetings, abstain from the use or possession of controlled  
5 substances and alcohol, participate in 20 days of public service work, and comply with Family  
6 Court and CPS orders.

7 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

8 **(January 10, 2001 Criminal Convictions for Welfare Fraud & Perjury)**

9 19. Respondent's application for registration as a pharmacy technician is subject to denial  
10 under sections 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that she was convicted of  
11 crimes that are substantially related to the qualifications, duties, and functions of a pharmacy  
12 technician, and would be a ground for discipline under section 4301, subdivision (l) of the Code  
13 for a registered pharmacy technician. The circumstances are as follows:

14 a. On or about January 23, 2001, in a criminal proceeding entitled *People of the*  
15 *State of California vs. Dawn Nichole Scott*, in San Diego County Superior Court, case number  
16 CD153793, Respondent was convicted on her plea of guilty to violating Welfare and Institutions  
17 Code section 10980, subdivision (c)(2), obtaining aid by misrepresentation over \$400, and Penal  
18 Code section 118, subdivision (a), perjury by false application for renewal of aid, felonies. As a  
19 result of the plea agreement, the court dismissed an additional count of perjury.

20 b. As a result of the convictions, on or about January 23, 2001, Respondent was  
21 sentenced to serve on day in jail, with credit for one day, and granted five years summary  
22 probation. Respondent was further ordered to complete 150 hours of volunteer work, and pay  
23 fines, fees, and restitution.

24 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

25 **(Multiple Drug-Related Criminal Convictions)**

26 20. Respondent's application for registration as a pharmacy technician is subject to denial  
27 under sections 480, subdivision (a)(3)(A) of the Code in that she was convicted of two  
28 misdemeanor and one felony drug-related offenses, as described in paragraphs 16-18, above,

1 conduct that would be a ground for discipline under section 4301, subdivision (k) of the Code for  
2 a registered pharmacy technician.

3 **SIXTH CAUSE FOR DENIAL OF APPLICATION**

4 **(Violation of State Laws Regulating Controlled Substances)**

5 21. Respondent's application for registration as a pharmacy technician is subject to denial  
6 under sections 480, subdivision (a)(3)(A) of the Code in that she violated state laws regulating  
7 controlled substances, as described in paragraphs 17 and 18, above. Such conduct would be a  
8 ground for discipline under section 4301, subdivision (j) of the Code for a registered pharmacy  
9 technician.

10 **SEVENTH CAUSE FOR DENIAL OF APPLICATION**

11 **(Commission of Acts Involving Dishonesty, Fraud, Deceit & Corruption)**

12 22. Respondent's application for registration as a pharmacy technician is subject to denial  
13 under sections 480, subdivisions (a)(2) and (a)(3)(A) of the Code in that she obtained public  
14 assistance funds by means of false statements and representations, as described in paragraph 19,  
15 above. Such conduct would be a ground for discipline under section 4301, subdivisions (f) and  
16 (g) of the Code for a registered pharmacy technician.

17 **EIGHTH CAUSE FOR DENIAL OF APPLICATION**

18 **(False Statement of Fact Required to be Revealed in the Application for Licensure)**

19 23. Respondent's application for registration as a pharmacy technician is subject to denial  
20 under section 480, subdivision (c) of the Code in that she failed to declare convictions as required  
21 on her Pharmacy Technician Application. The circumstances are as follows:

22 a. Respondent signed her application for licensure on August 3, 2012, certifying  
23 under penalty of perjury under the laws of the State of California to the truth and accuracy of all  
24 statements, answers and representations. The Applicant's Affidavit stated that an applicant must  
25 provide a written explanation for all affirmative answers.

26 b. Question 7 of the application states the following:

27 Have you ever been convicted of any crime in any state, the USA and its  
28 territories, military court or foreign country?

1 Check the box next to "Yes" if, you have ever been convicted or plead guilty to  
2 any crime. "Conviction" includes a plea agreement of no contest and any conviction  
3 that has been set aside or deferred pursuant to Sections 1000 or 1203.4 of the Penal  
4 Code, including infractions, misdemeanor, and felonies. You do not need to report a  
5 conviction for an infraction with a fine of less than \$300 unless the infraction  
6 involved alcohol or controlled substances. You must, however, disclose any  
7 convictions in which you entered a plea of no contest and any convictions that were  
8 subsequently set aside pursuant to sections 1000 or 1203.4 of the Penal Code.

9 Check the box next to "NO" if you have not been convicted of a crime.

10 You may wish to provide the following information in order to assist in the  
11 processing of your application: descriptive explanation of the circumstances  
12 surrounding the conviction (ie. dates and location of the incident and all  
13 circumstances surrounding the incident.) If documents were purged by the arresting  
14 agency and/or court, a letter of explanation from these agencies is required.

15 **Failure to disclose a disciplinary action or conviction may result in the  
16 license being denied or revoked for falsifying the application. Attach additional  
17 sheets if necessary. (Emphasis in original.)**

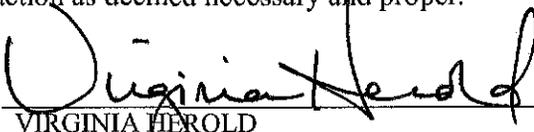
18 c. In response to Question 7, Respondent marked the box "Yes," however, she  
19 failed to provide the arrest dates, conviction dates, violations, and court of jurisdiction as required  
20 by the application. In a separate letter to the Board that accompanied the application, Respondent  
21 stated that she had been charged with two counts of child endangerment 15 years ago. No other  
22 information was provided concerning the convictions described in paragraphs 16-19, even though  
23 they met all criteria for disclosure.

24 **PRAYER**

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

- 27 1. Denying the application of Dawn Nichole Nyblade for a Pharmacy Technician  
28 Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 10/3/13



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

SD2013705214