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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:
13 **ROBERT LEE SMITH**
14 Respondent.

Case No. 4832
STATEMENT OF ISSUES

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 September 20, 2012, the Board of Pharmacy (Board) received an
21 application for a Pharmacy Technician Registration from Robert Lee Smith (Respondent). On or
22 about July 10, 2012, Robert Lee Smith certified under penalty of perjury to the truthfulness of all
23 statements, answers, and representations in the application. The Board denied the application on
24 March 1, 2013.

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 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
2 or profession for which the license was issued.

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

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

13 6. Section 4300 provides, in pertinent part, that every license issued by the Board is
14 subject to discipline, including suspension or revocation.

15 7. Section 4301 states, in pertinent part:

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

19

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

23

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

1 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
2 licensee or registrant to perform the functions authorized by his license or registration in a manner
3 consistent with the public health, safety, or welfare."

4 **CONTROLLED SUBSTANCE/DANGEROUS DRUG**

5 "Methamphetamine," is a schedule II controlled substance as defined in Health and Safety
6 Code section 11055, subdivision (d)(2), and is categorized a dangerous drug pursuant to section
7 4022.

8 **FIRST CAUSE FOR DENIAL OF APPLICATION**

9 **(Convictions of Substantially Related Crimes)**

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

12 a. On or about May 27, 2008, after pleading nolo contendere, Respondent was convicted
13 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving
14 while having 0.08% and more, by weight, of alcohol in his blood] in the criminal proceeding
15 entitled *The People of the State of California v. Robert Lee Smith, Jr.* (Super. Ct. San Bernardino
16 County, 2008, No. TCH700676). The Court sentenced Respondent to serve 16 days in San
17 Bernardino County Jail and placed him on 36 months probation, with terms and conditions.

18 b. The circumstances surrounding the conviction are that on or about September 8,
19 2007, the San Bernardino County Sheriff's Department observed Respondent driving down a
20 hilly dirt road at a moderate speed. When Respondent reached the end of the dirt road he hit a
21 chain link fence. While speaking to Respondent, the officer smelled a strong odor of an alcoholic
22 beverage emitting from inside the vehicle. Respondent was observed to have slurred speech and
23 his eyes were blood shot red. When asked how much he had to drink, Respondent admitted to
24 drinking 3 shots of Southern Comfort and two 12 ounces of Budweiser. During the booking
25 procedure, Respondent submitted to a blood test that resulted in a blood-alcohol content level of
26 0.14%.

27 c. On or about April 4, 2007, after pleading guilty, Respondent was convicted of one
28 misdemeanor count of violating Penal Code section 496, subdivision (a) [receiving stolen

1 property] in the criminal proceeding entitled *The People of the State of California v. Robert Lee*
2 *Smith* (Super. Ct. San Bernardino County, 2007, No. MCH021714.) The Court sentenced
3 Respondent to serve 60 days in San Bernardino County Jail and placed him on 24 months
4 probation, with terms and conditions.

5 d. The circumstances surrounding the conviction are that on or about August 22, 2006,
6 during a probation search of a third party at the residence where Respondent lived, Respondent
7 was contacted. When the officer entered the garage, he found numerous computers and other
8 electronic items. Respondent told officer he would loan money to people and hold personal
9 property for collateral. When asked if he ever thought that some of the property he was trading,
10 or buying so cheap could be stolen, Respondent stated, "it has crossed my mind" and "yeah
11 probably." Respondent also admitted to having a drug problem and had last used
12 Methamphetamine on Saturday. He states that he had been using Methamphetamine, "damn near
13 every day for the last 11 months." When asked what the digital scales were for, Respondent
14 stated, "to make sure I don't get ripped off when I buy dope."

15 e. On or about August 13, 1996, Respondent was convicted of one misdemeanor count
16 of violating Penal Code section 272 [contribute to delinquency of minor] in the criminal
17 proceeding entitled *The People of the State of California v. Robert Lee Smith* (Super. Ct. San
18 Bernardino County, 1996, No. MCH04229.) The Court sentenced Respondent to serve 75 days in
19 San Bernardino County Jail and placed him on 36 months probation, with terms and conditions.

20 f. The circumstances surrounding the conviction are that on or about April 8, 1996,
21 Respondent was arrested.

22 **SECOND CAUSE FOR DENIAL OF APPLICATION**

23 **(Acts Involving Dishonesty, Fraud, or Deceit)**

24 10. Respondent's application is subject to denial under section 480, subdivision (a)(2), in
25 that on or about August 22, 2006, Respondent committed acts involving dishonesty, fraud, or
26 deceit with the intent to substantially benefit himself, or substantially injure another.
27 Complainant refers to, and by this reference incorporates, the allegations set forth above in
28 paragraph 9, subparagraphs (d), as though set forth fully

1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 **(Acts Warranting Denial of Licensure)**

3 11. Respondent's application is subject to denial under sections 4301, subdivision (p) and
4 480, subdivisions (a)(3)A and (a)(3)(B), in that Respondent committed acts which if done by a
5 licentiate of the business and profession in question, would be grounds for suspension or
6 revocation of his license as follows:

7 a. Respondent was convicted of crimes substantially related to the qualifications,
8 functions, or duties of a pharmacy technician which to a substantial degree evidence his present
9 or potential unfitness to perform the functions authorized by his license in a manner consistent
10 with the public health, safety, or welfare, in violation of sections 4031, subdivision (l), and 490,
11 in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,
12 and by this reference incorporates, the allegations set forth above in paragraph 9, subparagraphs
13 (a), (c), and (e), inclusive, as though set forth fully.

14 b. On or about August 22, 2006, Respondent committed acts involving dishonesty,
15 fraud, or deceit in violation of section 4301, subdivision (f). Complainant refers to, and by this
16 reference incorporates, the allegations set forth above in paragraph 9, subparagraph (d), as though
17 set forth fully.

18 c. On or about September 8, 2007, Respondent used alcoholic beverages to an extent or
19 in a manner dangerous or injurious to himself, another person, or the public, in violation of
20 section 4301, subdivision (h). Complainant refers to, and by this reference incorporates, the
21 allegations set forth above in paragraph 9, subparagraph (b), as though set forth fully.

22 d. On or about August 22, 2006, Respondent by his own admission used a controlled
23 substance, to wit: Methamphetamine, in violating of section 4301, subdivision (h) and (j).).
24 Complainant refers to, and by this reference incorporates, the allegations set forth above in
25 paragraph 9, subparagraph (d), as though set forth fully.

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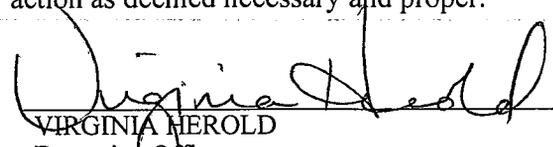
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PRAYER

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

1. Denying the application of Robert Lee Smith for a Pharmacy Technician Registration; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 3/24/14



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

LA2013509896