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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:

Case No. 4836

13 **JAMES ROBERT STEAD, II**

STATEMENT OF ISSUES

14 **Applicant for Registration as a**
15 **Pharmacy Technician**

16 Respondent.

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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 October 26, 2012, the Board of Pharmacy, Department of Consumer
23 Affairs received an application for a Registration as a Pharmacy Technician from James Robert
24 Stead, II (Respondent). On or about September 25, 2012, James Robert Stead, II 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 March 12, 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 references
4 are to the Business and Professions Code unless otherwise indicated.

5 4. Section 4300, subdivision (c) of the Code states "the board may refuse a license to any
6 applicant guilty of unprofessional conduct."

7 5. Section 475 of the Code states:

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

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

12 (2) Conviction of a crime.

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

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

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

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

23 6. Section 480 of the Code states:

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

26 (1) Been convicted of a crime. A conviction within the meaning of this
27 section means a plea or verdict of guilty or a conviction following a plea of nolo
28 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.

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

(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.

1 (B) The board may deny a license pursuant to this subdivision only if the
2 crime or act is substantially related to the qualifications, functions, or duties of the
3 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 has been convicted of a felony if he
6 or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with
7 Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
8 convicted of a misdemeanor if he or she has met all applicable requirements of the
9 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
10 person when considering the denial of a license under subdivision (a) of Section 482.

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

14 7. Section 482 of the Code states:

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

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

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

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

21 8. Section 493 of the Code states:

22 Notwithstanding any other provision of law, in a proceeding conducted by
23 a board within the department pursuant to law to deny an application for a license or
24 to suspend or revoke a license or otherwise take disciplinary action against a person
25 who holds a license, upon the ground that the applicant or the licensee has been
26 convicted of a crime substantially related to the qualifications, functions, and duties of
27 the licensee in question, the record of conviction of the crime shall be conclusive
28 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:

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

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

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

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

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1 **REGULATORY PROVISIONS**

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

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

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

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

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

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

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

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18 11. California Code of Regulations, title 16, section 1770 states:

19 For the purpose of denial, suspension, or revocation of a personal or facility license
20 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions
21 Code, a crime or act shall be considered substantially related to the qualifications,
22 functions or duties of a licensee or registrant if to a substantial degree it evidences present
23 or potential unfitness of a licensee or registrant to perform the functions authorized by his
24 license or registration in a manner consistent with the public health, safety, or welfare.
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26 **FIRST CAUSE FOR DENIAL OF APPLICATION**

27 **(November 8, 2006 Criminal Conviction for Driving with Blood Alcohol Concentration
28 of 0.08% or More on August 30, 2006)**

12. Respondent's application is subject to denial under section 480, subdivisions (a)(1) and
(a)(3)(A) of the Code in that he was convicted of a crime that is substantially related to the
qualifications, duties and functions of a registered pharmacy technician, and would be a ground for
discipline for a registered pharmacy technician under section 4301, subdivision (l) of the Code.

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1 13. On or about November 8, 2006, in a criminal proceeding entitled *People of the State*
2 *of California v. James Robert Stead, II*, in the Superior Court of California, County of Riverside,
3 Southwest Division, case number SWM054162, Respondent was convicted on his plea of guilty of
4 violating Vehicle Code section 23152(b) (driving with a blood alcohol concentration of 0.08
5 percent or more), a misdemeanor. As a result of a plea bargain, a count for violating Vehicle Code
6 section 11352(a) (DUI), was dismissed.

7 14. As a result of the conviction, the Court ordered Respondent to serve 18 days in the
8 county jail, with one day credit for time served, with the remainder of the time to be served
9 through the Riverside Sheriff's Office Weekender Program. The Court placed Respondent on two
10 years summary probation and ordered him to obey all laws, ordinances and court orders, pay
11 various fines and fees, not drive with alcohol in blood or within 6 hours of consuming alcohol, not
12 drive unless properly licensed nor without insurance or valid registration, attend and satisfactorily
13 complete a Drinking Driver Program, and to submit to chemical tests of blood, saliva, breath, or
14 urine or any reasonable physical test upon request of any probation or law enforcement officer.

15 **SECOND CAUSE FOR DENIAL OF APPLICATION**

16 **(January 18, 2011 Criminal Conviction for DUI and for Driving with Blood Alcohol**
17 **Concentration of 0.08% or More [0.22-0.25% BAC] on September 14, 2010)**

18 15. Respondent's application is subject to denial under section 480, subdivisions (a)(1) and
19 (a)(3)(A) of the Code in that he was convicted of a crime that is substantially related to the
20 qualifications, duties and functions of a registered pharmacy technician, and would be a ground for
21 discipline for a registered pharmacy technician under section 4301, subdivision (l) of the Code for
22 a registered pharmacy technician.

23 16. On or about January 18, 2011, in a criminal proceeding entitled *People of the State of*
24 *California v. James Robert Stead, II*, in the Superior Court of California, County of Riverside,
25 Southwest Division, case number SWM10006810, Respondent was convicted on his plea of guilty
26 of violating Vehicle Code sections 23152(a) (DUI) and 23152(b) (driving with a blood
27 alcohol concentration of 0.08 percent or more), misdemeanors, with an admitted allegation of a
28 prior DUI.

1 17. As a result of the conviction, the Court ordered Respondent to serve 25 days in the
2 county jail, with one day credit for time served, with the remainder of the time to be served
3 through the Weekender Program. The Court placed Respondent on two years summary probation
4 and also ordered him to obey all laws, ordinances and court orders, pay various fines and fees, not
5 drive unless properly licensed nor without insurance or valid registration, attend and satisfactorily
6 complete a Drinking Driver Program, and submit to chemical tests of blood, saliva, breath, or urine
7 or any reasonable physical test upon request of any probation or law enforcement officer.

8 18. The circumstances that led to the conviction at that on September 14, 2010, at
9 approximately 12:20 a.m., California Highway Patrol Officers observed a blue Chevy Silverado
10 truck traveling ahead of them in the area of Overland Road in Temecula, California. The officers
11 observed that the truck swerved and crossed a solid white line onto the shoulder of the freeway
12 several times. Officers performed a traffic stop of the vehicle and made contact with the driver
13 (Respondent). The officers could smell a strong odor of an alcoholic beverage coming from inside
14 the vehicle. The officers asked Respondent if he had any alcoholic beverages to drink and
15 Respondent told officers he had two Coors light beers and two Jack's earlier at Johnny C's Bar.
16 While speaking to Respondent, the officers noticed a strong odor of an alcoholic beverage emitting
17 from his breath and noticed that his eyes were very red, watery and sleepy in appearance, that his
18 speech was very slow and very slurred as he spoke, and that Respondent swayed as he was talking
19 to officers. The officers had Respondent perform a series of field sobriety tests which he failed and
20 the officers placed him under arrest and transported him to the Southwest Detention Center.
21 Upon arrival, Respondent completed a breath test at approximately 12:25 with three results of
22 0.22 percent, 0.25 percent , and 0.23 percent. Respondent was booked in the county jail.

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THIRD CAUSE FOR DISCIPLINE

(Use of Alcohol in a Manner Dangerous or Injurious to Self or Others)

19. Respondent's application is subject to denial under section 480, subdivision (a)(3)(A) of the Code in that he used alcohol in a manner dangerous or injurious to himself or others, which would be a ground for discipline for a registered pharmacy technician under section 4301, subdivision (h) of the Code, as is more fully detailed at paragraphs 12-18, above, which are incorporated here by reference.

FOURTH CAUSE FOR DISCIPLINE

(Multiple Convictions Involving the Use of Alcoholic Beverages)

20. Respondent's application is subject to denial under section 480, subdivision (a)(3)(A) of the Code in that he was convicted in two separate cases on charges involving the consumption of alcoholic beverages, which would be a ground for discipline for a registered pharmacy technician under section 4301, subdivision (k) of the Code, as is more fully detailed at paragraphs 12-18, above, which are incorporated here by reference.

DISCIPLINARY CONSIDERATIONS

21. To determine the degree of discipline, if any, to be imposed on Respondent for the violations alleged above, pursuant to California Code of Regulations, title 16, section 1769, Complainant alleges:

a. On or about March 20, 1996, in a criminal proceeding entitled *People of the State of California v. James Robert Stead, II*, in the Superior Court of California, County of Riverside, case number P961584, Respondent was convicted on his plea of guilty of violating Penal Code sections 484/490.5 (theft/petty theft of merchandise), a misdemeanor. The Court ordered Respondent to pay a fine.

b. On or about February 24, 1997, in a criminal proceeding entitled *People of the State of California v. James Robert Stead, II*, in the Superior Court of California, County of Riverside, case number PEM00099, Respondent was convicted on his plea of guilty of violating Vehicle Code sections 23152(b) (driving with a blood alcohol concentration of 0.08 percent or
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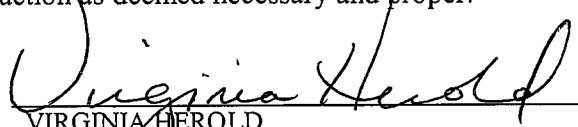
1 more), a misdemeanor. Respondent was sentenced to 10 days in the county jail, ordered to pay a
2 fine, and placed on probation for 5 years.

3 **PRAYER**

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

- 6 1. Denying the application of James Robert Stead, II, for a Pharmacy Technician
7 Registration;
8 2. Taking such other and further action as deemed necessary and proper.

9 DATED: 3/24/14


10 VIRGINIA HEROLD
11 Executive Officer
12 Board of Pharmacy
13 Department of Consumer Affairs
14 State of California
15 Complainant

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