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

12 In the Matter of the Statement of Issues
13 Against:

Case No. 4894

14 **JAMES ROGERS LEWIS**

STATEMENT OF ISSUES

15 **Applicant for a Pharmacy Technician**
16 **License**

Respondent.

17 Complainant alleges:

18 PARTIES

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

21 2. On or about January 6, 2013, the Board of Pharmacy, Department of Consumer
22 Affairs received an application for a Pharmacy Technician license from James Rogers Lewis
23 (Respondent). On or about January 3, 2013, James Rogers Lewis certified under penalty of
24 perjury to the truthfulness of all statements, answers, and representations in the application. The
25 Board denied the application on May 16, 2013.

26 JURISDICTION

27 3. This Statement of Issues is brought before the Board of Pharmacy (Board),
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.³ California
2 Code of Regulations, title 16, section 1770, states:

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

9 4. Section 480 of the Code states:

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

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

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

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

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

25 "(b) Notwithstanding any other provision of this code, no person shall be denied a license
26 solely on the basis that he or she has been convicted of a felony if he or she has obtained a
27 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
28 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has

1 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
2 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
3 Section 482.

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

7 5. Section 4301 of the Code states:

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

11 . . .

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

14 6. Section 4060 of the Code states:

15 "No person shall possess any controlled substance, except that furnished to a person upon
16 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
17 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
18 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician
19 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
20 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the
21 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
22 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-
23 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled
24 with the name and address of the supplier or producer. . ."

25 7. Health and Safety Code section 11351.5 states:

26 "Except as otherwise provided in this division, every person who possesses for sale or
27 purchases for purposes of sale cocaine base which is specified in paragraph (1) of subdivision (f)
28

1 of Section 11054, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170
2 of the Penal Code for a period of three, four, or five years.”

3 DRUGS INVOLVED

4 8. Cocaine base (“crack cocaine” is a cocaine base) is a schedule I controlled substance
5 under health and Safety Code section 11054(f)(1).

6 FIRST CAUSE FOR DENIAL OF APPLICATION

7 (Convictions)

8 9. Respondent's application is subject to denial under section 480 of the Code in that
9 Respondent was convicted of a crime that is substantially related to the duties, functions, or
10 qualifications of a pharmacy technician. On or about January 5, 2009, in Contra Costa Superior
11 Court Case No. 299081-0, Respondent was convicted of violating Vehicle Code section
12 2800.1(a), evading a peace officer. On or about April 4, 2008, Respondent willfully evaded a
13 police officer.

14 SECOND CAUSE FOR DENIAL OF APPLICATION

15 (Failure to Disclose Convictions)

16 10. Respondent's application is subject to denial under 480(c) of the code in that
17 Respondent knowingly made a false statement of fact required to be revealed on his application.
18 Respondent failed to disclose the conviction mentioned in paragraph 9.

19 THIRD CAUSE FOR DENIAL OF APPLICATION

20 (Illegal Possession of Crack for Sale)

21 11. Respondent's application is subject to denial under 480(c) of the code in conjunction
22 with code sections 4301(j), 4060 and Health and Safety Code section 11351.5, in that on or about
23 October 12, 1990, Respondent possessed crack cocaine for sale, an act that if done by a pharmacy
24 technician, would be grounds for suspension or revocation of his or her license.

25 PRAYER

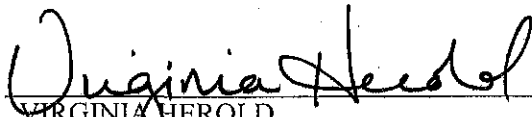
26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Board of Pharmacy issue a decision:

28 1. Denying the application of James Rogers Lewis for a Pharmacy Technician License;

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

DATED: 12/12/13



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

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