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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against: **RODNEY VERNON COREY** **aka PAUL MCCORMICK** **Applicant for Pharmacy Technician License** Respondent.	Case No. 5002 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

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

2. On or about April 5, 2013, the Board of Pharmacy, Department of Consumer Affairs received an Application for Registration as a Pharmacy Technician from Rodney Vernon Corey aka Paul McCormick (Respondent). On or about March 26, 2013, Respondent certified under penalty of perjury as to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on or about September 13, 2013.

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.

STATUTORY AND REGULATORY PROVISIONS

4. Section 4300, subdivision (c), of the Code states in pertinent part:

"(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy . . . ."

5. Section 4301 of the Code provides, in pertinent part, that "unprofessional conduct" is defined to include, but not be limited to, any of the following:

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

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

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

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

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.

6. Section 480 of the Code 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. . . . Any action which a board is permitted to take following the establishment of a conviction may be taken . . . 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 another, or substantially injure another; or

"(3) 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.

"The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the . . . [license]."

. . .

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

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

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

FACTUAL/PROCEDURAL BACKGROUND

8. On or about October 31, 1986, in a criminal case titled *People v. Rodney Vernon Corey*, Case No. 10596 in Humboldt County Superior Court, Respondent was convicted of violating Penal Code section 288, subdivision (a) (Lewd and Lascivious Act With/Upon Body of Child Under 14), a felony. The conviction was entered as follows:

a. On or about August 18, 1986, Respondent was charged in Case No. 10596 with two felony counts of violating Penal Code section 288, subdivision (a).

b. On or about October 31, 1986, Respondent pleaded guilty and was convicted of the second felony count of violating Penal Code section 288, subdivision (a).

c. On or about July 21, 1987, Respondent was sentenced to six (6) years in state prison, with the execution of sentence suspended in favor of the imposition of a period of formal probation of five (5) years, on terms and conditions including 365 days in county jail (with 1 day suspended, CTS 35 days), and payment of fines and fees.

d. On or about March 29, 1989, Respondent's probation was revoked and then reinstated, with a further requirement that he serve an additional thirty (30) days in county jail.

9. On or about March 27, 2008, in a criminal case titled *People v. Rodney Vernon Corey*, Case No. CR081344S in Humboldt County Superior Court, Respondent was convicted of violating Vehicle Code section 23152, subdivision (a) (Driving Under the Influence of Alcohol or Drug), a misdemeanor, with an admitted special allegation that he had a blood alcohol content of 0.15% or more at the time of the offense. The conviction was entered as follows:

a. On or about February 26, 2008, Respondent was charged in Case No. CR081344S with violating (1) Vehicle Code section 23152, subdivision (a) (Driving Under the Influence of Alcohol or Drug), a misdemeanor, and (2) Vehicle Code section 23152, subdivision (b) (Driving With Blood Alcohol of 0.08% or More), a misdemeanor, with a special allegation that Respondent had a blood alcohol content of 0.15% or more per Vehicle Code section 23578.

b. On or about March 27, 2008, Respondent pleaded guilty and was convicted of the first count of violating Vehicle Code section 23152, subdivision (a) (Driving Under the Influence of Alcohol or Drug), a misdemeanor, and also admitted to the special allegation of having a blood alcohol content of 0.15% or more. The second count was dismissed.

c. On or about March 27, 2008, imposition of sentence was suspended in favor of the imposition of a period of conditional revocable release (probation) of three (3) years, on terms and conditions including twenty (20) days in county jail, required completion of a multiple offender alcohol program, and payment of fines and fees.

10. On or about March 27, 2008, in a criminal case titled *People v. Rodney Vernon Corey*, Case No. CR081451S in Humboldt County Superior Court, Respondent was convicted of violating Vehicle Code section section(s) 23103/23103.5 (Reckless Driving with Alcohol Involved ["Wet Reckless"]), a misdemeanor. The conviction was entered as follows:

a. On or about March 4, 2008, Respondent was charged in Case No. CR081451S with violating Vehicle Code section 23152, subdivision (a) (Driving Under the Influence of Alcohol or Drug), a misdemeanor, with a special allegation that Respondent refused/failed to complete a chemical test as required per Vehicle Code section 23577.

b. On or about March 27, 2008, Respondent pleaded guilty and was convicted of a lesser/negotiated charge of violating Vehicle Code section(s) 23103/23103.5 (Reckless Driving with Alcohol Involved ["Wet Reckless"]), a misdemeanor.

c. On or about March 27, 2008, imposition of sentence was suspended in favor of the imposition of a period of conditional revocable release (probation) of three (3) years, on terms and conditions including attending alcohol education and payment of fines and fees.

11. On or about May 29, 2008, in a criminal case titled *People v. Rodney Vernon Corey*, Case No. CR082390S in Humboldt County Superior Court, Respondent was convicted of violating Vehicle Code section 14601.5, subdivision (a) (Driving with Suspended License), a misdemeanor. The conviction was entered as follows:

a. On or about April 21, 2008, Respondent was charged in Case No. CR082390S with violating Vehicle Code section 14601.5, subdivision (a) (Driving with Suspended License), a misdemeanor. On or about May 29, 2008, Respondent pleaded guilty and was convicted violating Vehicle Code section 14601.5, subdivision (a) (Driving with Suspended License), a misdemeanor.

b. On or about May 29, 2008, imposition of sentence was suspended in favor of the imposition of a period of conditional revocable release (probation) of one (1) year, on terms and conditions including payment of fines and fees.

12. On or about October 12, 2012, Respondent's petition(s) pursuant to Penal Code section 1203.4 in Case Nos. CR081344S, CR081451S, and CR082390S were granted, and his plea, verdict, and finding of guilt in each of these matters was set aside, a plea of not guilty was entered, and each of the cases was dismissed. In each case, the Order For Dismissal stated, in pertinent part: "a. The defendant is required to disclose the above conviction in response to any direct question contained in any questionnaire or application for public office or for licensure by any state or local agency or for contracting with the California State Lottery."

13. On or about March 26, 2013, Respondent signed his Application for Registration as a Pharmacy Technician and included affidavit, certifying under penalty of perjury the truth and accuracy of all statements, answers, and representations therein. That Application includes seven yes/no questions on pages 2 and 3 which are preceded by the instruction: **You must provide a written explanation for all affirmative answers indicated below. Failure to do so may result in this application being deemed incomplete and being withdrawn.**

Question 7 of this series of questions in the Application then asks:

Have you ever been convicted of any crime in any state, the USA and its territories, military court or foreign country? Check the box next to "**Yes**" if you have ever been convicted or plead guilty to any crime. "Conviction" includes a plea of no contest and any conviction that has been set aside or deferred pursuant to Sections 1000 or 1203.4 of the Penal Code, including infractions, misdemeanors, and felonies. You do not need to report a conviction for an infraction with a fine of less than $300 unless the infraction involved alcohol or controlled substances. You must, however, disclose any convictions in which you entered a plea or no contest and any convictions that were subsequently set aside or deferred pursuant to sections 1000 or 1203.4 of the Penal Code. Check the box next to "NO" if you have not been convicted of a crime. You may wish to provide the following information in order to assist the processing of your application: descriptive explanation of the circumstances surrounding the conviction (i.e. dates and location of incident and all circumstances surrounding the incident.) If documents were purged by the arresting agency and/or court, a letter of explanation from these agencies is required. **Failure to disclose a disciplinary action or conviction may result in the license being denied or revoked for falsifying the application. Attach additional sheets if necessary.**

14. Respondent checked the box for "Yes" in response to Question 7, and attached a brief statement describing his conviction in 1987 of violating Penal Code section 288, subdivision (a), along with an Application for Clemency that he said had been submitted to the Governor. There was no disclosure in the application or its attached materials of any of Respondent's other three convictions suffered in March and April 2008.

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15. On or about June 14, 2013, the Board sent a letter to Respondent asking him to give written explanation(s) of the specific circumstances of the convictions identified in paragraphs 8, 9, and 10 above, as well as an explanation for his failure to disclose the two 2008 convictions. The letter also requested that Respondent submit a DMV report showing his driving status, etc.

16. On or about June 25, 2013, Respondent sent a responsive letter attaching a copy of his DMV report, which for the first time disclosed the conviction identified in paragraph 11 above.

17. On or about July 3, 2013, Respondent sent a responsive letter briefly describing the circumstances of the convictions identified in paragraphs 8, 9, and 10 above, and explaining his failure to disclose the convictions identified in paragraphs 9 and 10 above as being based on his belief that those convictions had been "dismissed" and were no longer required to be disclosed.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Conviction of Substantially Related Crime(s))

18. Respondent's application is subject to denial under the following section(s) of the Code: 480(a)(1); 480(a)(3) by reference to 4301(l); and/or 4300(c) by reference to 4301(l) and California Code of Regulations, title 16, section 1770, for conviction of a substantially related crime or crimes, in that between in or about 1986 and in or about 2008, as described above in paragraphs 8, 9, 10, and 11, Respondent suffered four (4) substantially related convictions.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Conviction of Alcohol-Involved Crimes)

19. Respondent's application is subject to denial under the following section(s) of the Code: 480(a)(3) by reference to 4301(k); and/or 4300(c) by reference to 4301(k), in that, as described in paragraphs 9 and 10 above, Respondent was convicted of more than one misdemeanor involving the use or consumption of an alcoholic beverage.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Dangerous or Injurious Use of Alcohol)

20. Respondent's application is subject to denial under the following section(s) of the Code: 480(a)(3) by reference to 4301(h); and/or 4300(c) by reference to 4301(h), in that, as described in paragraphs 9 and 10 above, Respondent made dangerous or injurious use of alcohol.

FOURTH CAUSE FOR DENIAL OF APPLICATION

(Dishonesty in Application Material(s))

21. Respondent's application is subject to denial under the following section(s) of the Code: 480(c); 480(a)(2); 480(a)(3) by reference to 4301(f) and/or (g); and/or 4300(c) by reference to 4301(f) and/or (g) in that, as described in paragraphs 9-17 above, Respondent was dishonest and/or falsely represented and/or made false statement(s) of fact regarding the nature, status, and/or significance of the elements of his criminal history, in his application materials.

FIFTH CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct)

22. Respondent's application is subject to denial under the following section(s) of the Code: 480(a)(3) by reference to 4301; and/or 4300(c) by reference to 4301, in that, as described in paragraphs 8 through 21 above, Respondent engaged in unprofessional conduct.

PRAYER

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 Rodney Vernon Corey to be a pharmacy technician;

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

DATED: 4/8/14

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

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