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

12 In the Matter of the Statement of Issues Against:

Case No. 5346

13 **SHANEE NICOLE BAUMGARTNER,**  
14 **AKA SHANEE NICOLE BRANNIGAN**

**STATEMENT OF ISSUES**

15 **Pharmacy Technician Registration Applicant**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

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

23 2. On January 21, 2014, the Board of Pharmacy, Department of Consumer Affairs  
24 received an application for a Pharmacy Technician Registration from Shanee Nicole  
25 Baumgartner, also known as Shanee Nicole Brannigan (Respondent). On January 14, 2014,  
26 Shanee Nicole Baumgartner certified under penalty of perjury to the truthfulness of all  
27 statements, answers, and representations in the application. The Board denied the application on  
28 September 3, 2014.



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7. Section 482 of the Code states:

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

- (a) Considering the denial of a license by the board under section 480; or
- (b) Considering suspension or revocation of a license under section 490.

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

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to 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."

9. Section 4060 of the Code states:

A person shall not possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the possession of any controlled substance by a manufacturer, wholesaler, third-party logistics provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, if in stock in containers correctly labeled with the name and address of the supplier or producer.

This section does not authorize a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

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10. Section 4301 of the Code states:

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

....

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

....

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

....

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

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1 **REGULATORY PROVISIONS**

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

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

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

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

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

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

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

13 .....

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

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

21 13. Code of Federal Regulations, title 21, section 1301.71, subdivision (f) states:

22 A collector shall not employ, as an agent or employee who has access to  
23 or influence over controlled substances acquired by collection, any person who  
24 has been convicted of any felony offense relating to controlled substances or who,  
25 at any time, had an application for registration with DEA denied, had a DEA  
26 registration revoked or suspended, or has surrendered a DEA registration for  
27 cause. For purposes of this subsection, "for cause" means in lieu of, or as a  
28 consequence of, any Federal or State administrative, civil, or criminal action  
resulting from an investigation of the individual's handling of controlled  
substances.

1 **DRUG AT ISSUE**

2 14. Hydrocodone is a Schedule II controlled substance as designated by Health and  
3 Safety Code section 11055, subdivision (b)(1)(I) and is a dangerous drug pursuant to Code  
4 section 4022.

5 **FIRST CAUSE FOR DENIAL OF APPLICATION**

6 **(March 5, 2008 Conviction for Tampering with Drug Records on May 7 and 14, 2007)**

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

12 a. On March 5, 2008, in a criminal proceeding entitled *The State of Oregon,*  
13 *Plaintiff, vs. Shanee Nicole Baumgartner, Defendant,* in Umatilla County Circuit Court, Umatilla  
14 County Courthouse Case Number CF070460, Respondent was convicted on her plea of guilty to  
15 two counts of violation of Oregon Revised Statutes (ORS) section 167.212, tampering with drug  
16 records, class C felonies reduced to class A misdemeanors. Three felony charges for separate  
17 violations of ORS section 167.212, were dismissed pursuant to a plea bargain.

18 b. As a result of the convictions, on March 5, 2008, Respondent was  
19 sentenced to be committed to the custody of the Umatilla County Sheriff for 120 days. However,  
20 the 120 days of incarceration was suspended and Respondent was granted three years bench  
21 probation subject to standard narcotics conditions. Respondent was ordered to complete two 80-  
22 hour community services with the Umatilla-Morrow County Community Corrections program,  
23 to be served concurrently. Respondent was also ordered to pay fees, assessments, fines, and  
24 restitution.

25 c. The facts that led to the convictions are that on March 21, April 12 and 16,  
26 and May 7 and 14, 2007, Respondent, using different aliases, called-in and left messages for  
27 prescription refills at a Walmart Pharmacy and a Safeway Pharmacy in Pendleton, Oregon. On  
28 May 14, 2007, the pharmacist reviewing prescription refill messages at the Walmart Pharmacy

1 called the office of Respondent's alleged prescribing physician to confirm authority. A member  
2 of the staff at the office informed the pharmacist that nobody worked there by the name that  
3 Respondent used as an alias and that Respondent was not a patient. Walmart Pharmacy records  
4 also indicated that Respondent successfully obtained prescription refills using a different alias  
5 through another prescribing physician. The pharmacist also called the other physician's office  
6 and was told that there was no employee working in that office using Respondent's second alias.  
7 Respondent was a patient at the second physician's office but had not been prescribed  
8 Hydrocodone. On May 14, 2007, a responding officer from the Pendleton City Police  
9 Department (PCPD) initiated contact with Respondent as she was about to pick-up her fraudulent  
10 prescription refill. Thereafter, Respondent was transported to the PCPD, where she admitted to  
11 fraudulently obtaining Hydrocodone. Investigation showed that Respondent fraudulently  
12 received \$144.76 worth of prescription medication from the Walmart Pharmacy branch and  
13 \$723.11 worth of prescription medication from the Safeway Pharmacy branch during the period  
14 January to May 2007.

15 **SECOND CAUSE FOR DENIAL OF APPLICATION**

16 **(Act If Done By Licentiate – Commission of Acts Involving Moral Turpitude, Dishonesty,  
17 Fraud, Deceit, or Corruption)**

18 16. Respondent's application for registration as a pharmacy technician is subject to  
19 denial under Code section 480, subdivisions (a)(2) and (a)(3)(A) in that she committed acts  
20 which involve moral turpitude, dishonesty, fraud, deceit, and corruption, which would be  
21 grounds for discipline for a registered pharmacy technician under Code section 4301, subdivision  
22 (f). Respondent committed theft of controlled substances by deception on March 21, April 12  
23 and 16, and May 7 and 14, 2007, as described in paragraph 15, above, which is incorporated by  
24 reference.

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1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 **(Act If Done By Licentiate - Knowingly Making Utterances of Prescriptions that**  
3 **Falsely Represent the Existence of a State of Facts)**

4 17. Respondent's application for registration as a pharmacy technician is subject to  
5 denial under Code section 480, subdivisions (a)(2) and (a)(3)(A) in that she committed acts  
6 involving fraudulent prescriptions that falsely represented the existence of a state of facts when  
7 she made calls and left voice messages on March 21, April 12 and 16, and May 7 and 14, 2007,  
8 as described in paragraph 15, above, and incorporated herein by this reference. Respondent's  
9 false representations would also be grounds for discipline for a registered pharmacy technician  
10 under Code section 4301, subdivision (g).

11 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

12 **(Act If Done By Licentiate - Violation of Drug Regulation Laws)**

13 18. Respondent's application for registration as a pharmacy technician is subject to  
14 denial under Code section 480, subdivision (a)(3)(A) in that on March 21, April 12 and 16, and  
15 May 7 and 14, 2007, she violated ORS section 167.212, tampering with drug records, class C  
16 felonies, a statute of the State of Oregon regulating controlled substances and dangerous drugs,  
17 which would be a ground for discipline for a licensed pharmacy technician under Code section  
18 4301, subdivision (j).

19 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

20 **(Act If Done By Licentiate - Violation of Pharmacy Laws)**

21 19. Respondent's application for registration as a pharmacy technician is subject to  
22 denial under Code section 480, subdivision (a)(3)(A) in that on March 21, April 12 and 16, and  
23 May 7 and 14, 2007, she violated ORS section 167.212, tampering with drug records, class C  
24 felonies, a pharmacy law of the State of Oregon regulating controlled substances and dangerous  
25 drugs, which would be a ground for discipline for a licensed pharmacy technician under Code  
26 section 4301, subdivision (o).

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**SIXTH CAUSE FOR DENIAL OF APPLICATION**

**(Act If Done By Licentiate – Violation of Federal Regulation)**

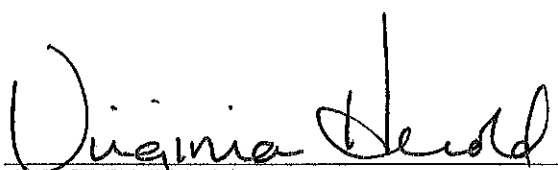
20. Respondent's application for registration as a pharmacy technician is subject to denial under Code section 480, subdivision (a)(3)(A) in that on March 21, April 12 and 16, and May 7 and 14, 2007, she violated ORS section 167.212, tampering with drug records, class C felonies, a pharmacy law of the State of Oregon regulating controlled substances and dangerous drugs. Such violation would also be a ground for discipline for a licensed pharmacy technician under Code section 4301, subdivision (o), in conjunction with Code of Federal Regulations, title 21, section 1301.71, subdivision (f), a collector shall not employ, as an agent or employee who has access to or influence over controlled substances acquired by collection if the person has been convicted of any felony offense relating to controlled substances.

**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 Shanee Nicole Baumgartner, also known as Shanee Nicole Brannigan for a Pharmacy Technician Registration; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 4/1/15



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

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