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7

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

11 In the Matter of the Statement of Issues
Against:

Case No. 5383

12 **RICHARD ANTHONY ORTEGA**

STATEMENT OF ISSUES

13 Pharmacy Technician Registration Applicant

14 Respondent.
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 December 20, 2013, the Board of Pharmacy, Department of Consumer
21 Affairs received an application for a Pharmacy Technician Registration from Richard Anthony
22 Ortega (Respondent). On or about December 18, 2013, Richard Anthony Ortega certified under
23 penalty of perjury to the truthfulness of all statements, answers, and representations in the
24 application. The Board denied the application on December 2, 2014.

25 **JURISDICTION**

26 3. This Statement of Issues is brought before the Board of Pharmacy (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code (Code) unless otherwise indicated.

1 **STATUTORY PROVISIONS**

2 4. Section 480 of the Code states, in pertinent part:

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

5 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
6 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
7 board is permitted to take following the establishment of a conviction may be taken when the
8 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
9 an order granting probation is made suspending the imposition of sentence, irrespective of a
10 subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

11

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

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

17

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

21 5. Section 490 of the Code provides, in pertinent part, that a board may suspend or
22 revoke a license on the ground that the licensee has been convicted of a crime substantially
23 related to the qualifications, functions, or duties of the business or profession for which the
24 license was issued.

25 6. Section 492 of the Code states, in pertinent part:

26 "Notwithstanding any other provision of law, successful completion of any diversion
27 program under the Penal Code, or successful completion of an alcohol and drug problem
28 assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of

1 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
2 (commencing with Section 500) of this code, or any initiative act referred to in that division, from
3 taking disciplinary action against a licensee or from denying a license for professional
4 misconduct, notwithstanding that evidence of that misconduct may be recorded in a record
5 pertaining to an arrest.

6 This section shall not be construed to apply to any drug diversion program operated by any
7 agency established under Division 2 (commencing with Section 500) of this code, or any
8 initiative act referred to in that division.

9 7. Section 4060 of the Code states, in pertinent part:

10 "No person shall possess any controlled substance, except that furnished to a person upon
11 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic
12 doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
13 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
14 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
15 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
16 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
17 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
18 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
19 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
20 labeled with the name and address of the supplier or producer. . . ."

21 8. Section 4300 of the Code states, in pertinent part:

22

23 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct.
24 The board may, in its sole discretion, issue a probationary license to any applicant for a license
25 who is guilty of unprofessional conduct and who has met all other requirements for licensure.
26 The board may issue the license subject to any terms or conditions not contrary to public policy. .
27 . . ."

28 9. Section 4301 of the Code states, in pertinent part:

1 "The board shall take action against any holder of a license who is guilty of unprofessional
2 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

3 Unprofessional conduct shall include, but is not limited to, any of the following:

4

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

8

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

14

15 "(l) The conviction of a crime substantially related to the qualifications, functions, and
16 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
17 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
18 substances or of a violation of the statutes of this state regulating controlled substances or
19 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
20 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
21 The board may inquire into the circumstances surrounding the commission of the crime, in order
22 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
23 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
24 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
25 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
26 of this provision. The board may take action when the time for appeal has elapsed, or the
27 judgment of conviction has been affirmed on appeal or when an order granting probation is made
28 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of

1 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
2 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
3 indictment.

4

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

9 "(p) Actions or conduct that would have warranted denial of a license. . . ."

10 **REGULATORY PROVISION**

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

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

18 **CONTROLLED SUBSTANCE / DANGEROUS DRUGS**

19 11. Marijuana is a hallucinogenic Schedule I controlled substances under State and
20 federal law. (Health & Safe. Code, §11054, subs. (d)(13) and (20); 21 U.S.C. § 812.)

21 Marijuana is also a dangerous drug as defined in section 4022 of the Code.

22 **FIRST CAUSE FOR DENIAL OF APPLICATION**

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

24 12. Respondent's application is subject to denial under section 480, subdivision (a)(1), in
25 that Respondent was convicted of substantially related crimes, as follows:

26 a. On or about January 12, 2011, after pleading guilty, Respondent was convicted of one
27 misdemeanor count of violating Penal Code section 148, subdivision (a)(1) [resist, obstruct, delay
28 of peace officer or EMT], in the criminal proceeding entitled *The People of the State of*

1 *California v. Richard Anthony Ortega* (Super. Ct. San Bernardino County, 2011, No.
2 MVA1003838). The Court sentenced Respondent to 14 days in jail, placed him on 18 months
3 summary probation with terms and conditions, and ordered him to pay fines. On or about August
4 15, 2013, the Court dismissed the case pursuant to Penal Code section 1203.4.

5 b. The circumstances surrounding the conviction are that on or about December 28,
6 2010, Respondent ran away from law enforcement officers who were attempting to detain him.
7 Subsequently, Respondent ignored the officers' commands for him to stop.

8 c. On or about December 14, 2011, after pleading guilty, Respondent was convicted of
9 one misdemeanor count of violating Penal Code section 647, subdivision (f) [disorderly conduct:
10 person under the influence of alcohol or drugs], in the criminal proceeding entitled *The People of*
11 *the State of California v. Richard Anthony Ortega* (Super. Ct. San Bernardino County, 2011, No.
12 MVA1102715). The Court placed Respondent on 24 months summary probation with terms and
13 conditions, ordered him to complete 32 hours in a work sentence program, and ordered him to
14 pay into a Victim Restitution Fund. On or about August 15, 2013, the Court dismissed the case
15 pursuant to Penal Code section 1203.4.

16 d. The circumstances surrounding the conviction are that on or about October 9, 2011,
17 Respondent was observed passed out on a sidewalk due to intoxication. Upon contact, a law
18 enforcement officer detected a strong odor of an alcoholic beverage emitting from Respondent.
19 Respondent informed the officer that he had a few alcoholic drinks.

20 **SECOND CAUSE FOR DENIAL OF APPLICATION**

21 **(Knowingly Made a False Statement of Fact)**

22 13. Respondent's application is subject to denial under section 480, subdivision (c), in
23 that on or about December 18, 2013, Respondent knowingly made a false statement of fact by
24 failing to disclose his two convictions on his application for licensure to the Board, as follows:

25 a. On or about September 24, 2012, after pleading nolo contendere, Respondent was
26 convicted of one interlineated infraction count of violating Penal Code section 415 [fighting;
27 noise; offensive words in a public place], in the criminal proceeding entitled *The People of the*
28 *State of California v. Richard Anthony Ortega* (Super. Ct. San Bernardino County, 2012, No.

1 MVA1201535). The circumstances surrounding the conviction are that on or about June 22,
2 2012, Respondent was showing signs and symptoms of intoxication in the middle of a street.
3 Subsequently, Respondent was arrested and charged with violating Penal Code section 647,
4 subdivision (f) [disorderly conduct: person under the influence of alcohol or drugs]. The Court
5 ordered Respondent to pay a fine.

6 b. On or about September 17, 2013, after pleading guilty, Respondent was convicted of
7 one lesser infraction count of violating Penal Code section 415 [fighting; noise; offensive words
8 in a public place], in the criminal proceeding entitled *The People of the State of California v.*
9 *Richard Anthony Ortega* (Super. Ct. San Bernardino County, 2013, No. 695786RO). The
10 circumstances surrounding the conviction are that on or about July 14, 2013, Respondent got into
11 an altercation with another person in the middle of a street. Upon contact, a law enforcement
12 office smelled the odor of an alcoholic beverage on Respondent, and observed that he was
13 showing signs and symptoms of intoxication. Subsequently, Respondent was arrested and
14 charged with violating Penal Code section 647, subdivision (f) [disorderly conduct: person under
15 the influence of alcohol or drugs]. The Court ordered Respondent to pay a fine.

16 **THIRD CAUSE FOR DENIAL OF APPLICATION**

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

18 14. Respondent's application is subject to denial under sections 4301, subdivision (o) and
19 / or (p), and 480, subdivisions (a)(3), on the grounds of unprofessional conduct, in that
20 Respondent committed acts which if done by a licentiate of the business and profession in
21 question, would be grounds for suspension or revocation of his license, as follows:

22 a. Sections 490, and 4301, subdivision (l), in conjunction with California Code of
23 Regulations, title 16, section 1770, in that on or about January 12, 2011 and December 14, 2011
24 Respondent was convicted of crimes substantially related to the qualifications, functions, or
25 duties of a pharmacy technician which to a substantial degree evidence his present or potential
26 unfitness to perform the functions authorized by his license in a manner consistent with the public
27 health, safety, or welfare. Complainant refers to and by this reference incorporates the allegations
28 set forth above in paragraph 11, subparagraphs a and c, inclusive, as though set forth fully.

1 b. Section 4301, subdivision (j), on the grounds of unprofessional conduct, for violating
2 Code section 4060, in that on or about June 3, 2010, Respondent was in possession of 5.7 grams
3 of Marijuana, a controlled substance and a dangerous drug, without a valid prescription.

4 c. Section 4301, subdivision (h), on the grounds of unprofessional conduct, in that
5 Respondent administered to himself Marijuana, a dangerous drug, and alcohol to the extent or in
6 a manner as to be dangerous or injurious to himself or others. Specifically, Respondent admitted
7 to smoking Marijuana and drinking two cups of Vodka. Subsequently, on or about August 16,
8 2010, after pleading guilty, Respondent was granted a Deferred Entry of Judgment for violating
9 Penal Code section 647, subdivision (f) [public intoxication], in the criminal proceeding entitled
10 *The People of the State of California v. Richard Anthony Ortega* (Super. Ct. Riverside County,
11 2010, RIM10009000). On or about August 13, 2013, the Court dismissed the case due to
12 completion of the Deferred Entry of Judgment.


13 **PRAYER**

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

- 16 1. Denying the application of Richard Anthony Ortega for a Pharmacy Technician
17 Registration; and
18 2. Taking such other and further action as deemed necessary and proper.

19
20
21 DATED: _____

9/12/15


22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant

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