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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. 5578

13 **JUAN DE JESUS AVILEZ**

STATEMENT OF ISSUES

14 **Pharmacy Technician Registration**
15 **Applicant**

16 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 May 4, 2015, the Board of Pharmacy, Department of Consumer Affairs
22 received an application for a Pharmacy Technician Registration from Juan de Jesus Avilez
23 (Respondent). On or about April 15, 2015, Juan de Jesus Avilez 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 July 17, 2015.

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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
4 references are to the Business and Professions Code (Code) unless otherwise indicated.

5 4. Section 4300, subdivision (c) of the Code provides, in pertinent part, that the Board
6 may refuse a license to any applicant guilty of unprofessional conduct.

7 **STATUTORY PROVISIONS**

8 5. Section 475 of the Code states:

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

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

13 (2) Conviction of a crime.

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

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

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

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

24 6. Section 477 of the Code states:

25 As used in this division:

26 (a) "Board" includes "bureau," "commission," "committee," "department,"
27 "division," "examining committee," "program," and "agency."

28 (b) "License" includes certificate, registration or other means to engage in a
business or profession regulated by this code.

7. Section 480 of the Code states:

(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. A conviction within the meaning of this section
means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

1 Any action that a board is permitted to take following the establishment of a
2 conviction may be taken when the time for appeal has elapsed, or the judgment of
3 conviction has been affirmed on appeal, or when an order granting probation is made
4 suspending the imposition of sentence, irrespective of a subsequent order under the
5 provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

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

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

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

13 (b) Notwithstanding any other provision of this code, a person shall not be
14 denied a license solely on the basis that he or she has been convicted of a felony if he
15 or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing
16 with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
17 convicted of a misdemeanor if he or she has met all applicable requirements of the
18 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
19 person when considering the denial of a license under subdivision (a) of Section 482.

20 (c) Notwithstanding any other provisions of this code, a person shall not be
21 denied a license solely on the basis of a conviction that has been dismissed pursuant
22 to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a
23 conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of
24 the Penal Code shall provide proof of the dismissal.

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

28 8. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any
diversion program under the Penal Code, or successful completion of an alcohol and
drug problem assessment program under Article 5 (commencing with section
23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
agency established under Division 2 ([Healing Arts] commencing with Section 500)
of this code, or any initiative act referred to in that division, from taking disciplinary
action against a licensee or from denying a license for professional misconduct,
notwithstanding that evidence of that misconduct may be recorded in a record
pertaining to an arrest.

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

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9. 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."

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:

....

(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.

....

(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

1 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
2 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
3 dismissing the accusation, information, or indictment. . . .

4 11. Section 4022 of the Code states

5 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
6 self-use in humans or animals, and includes the following:

7 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
8 without prescription," "Rx only," or words of similar import.

9 (b) Any device that bears the statement: "Caution: federal law restricts this
10 device to sale by or on the order of a _____," "Rx only," or words of similar
11 import, the blank to be filled in with the designation of the practitioner licensed to use
12 or order use of the device.

13 (c) Any other drug or device that by federal or state law can be lawfully
14 dispensed only on prescription or furnished pursuant to Section 4006.

15 12. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
16 controlled substance, except that furnished to a person upon the prescription of a physician,
17 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

18 REGULATORY PROVISIONS

19 13. California Code of Regulations, title 16, section 1768 states:

20 (a) Where the board has denied an application for a license, the earliest date on
21 which the applicant may reapply for a license is one year after the effective date of
22 the denial.

23 (b) All competent evidence of rehabilitation presented will be considered upon
24 a reapplication. The board shall use the criteria listed in section 1769 when
25 considering evidence of rehabilitation.

26 14. California Code of Regulations, title 16, section 1769 states:

27 (a) When considering the denial of a facility or personal license under Section
28 480 of the Business and Professions Code, the board, in evaluating the rehabilitation
of the applicant and his present eligibility for licensing or registration, will consider
the following criteria:

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

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

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

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

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

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

5 For the purpose of denial, suspension, or revocation of a personal or facility
6 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
7 Professions Code, a crime or act shall be considered substantially related to the
8 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.

9 **DRUG**

10 16. Methamphetamine is a Schedule II controlled substance as designated by Health
11 and Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business
12 and Professions Code section 4022.

13 **FIRST CAUSE FOR DENIAL OF APPLICATION**

14 **(June 15, 2010 Criminal Convictions for DUI on March 14, 2010)**

15 17. Respondent's application is subject to denial under section 480, subdivisions (a)(1)
16 and (a)(3)(A) of the Code in that he was convicted of crimes that are substantially related to the
17 qualifications, duties, and functions of a registered pharmacy technician, and would be a ground
18 for discipline under section 4301, subdivision (l) of the Code for a registered pharmacy
19 technician. The circumstances are as follows:

20 a. On June 15, 2010, in a criminal proceeding entitled *People of the State of*
21 *California vs. Juan de Jesus Avilez*, in Riverside County Superior Court, case number
22 RIM10005274, Respondent was convicted on his plea of guilty to violating Vehicle Code section
23 23152, subdivision (a), driving under the influence; Vehicle Code section 23152, subdivision (b),
24 driving with a blood alcohol concentration (BAC) of .08 percent or more, misdemeanors.
25 Respondent also pled guilty to the infraction offense of minor driving with a BAC of .05 percent
26 or more (Veh. Code, § 23140(a)). (Respondent was 19 years old at the time of his arrest.)

27 b. As a result of the convictions, the court granted summary probation for 36
28 months, and Respondent was committed to the custody of the Riverside County Sheriff's Labor

1 Program for six days. Respondent was ordered to pay fees and fines, comply with standard DUI
2 probation terms, submit to chemical testing upon request of a probation or law enforcement
3 officer, complete a four-month First Offender DUI Program, and complete the alternative
4 sentencing TEMPO program.¹ Respondent's driver's license was suspended for a period of one
5 year.

6 **SECOND CAUSE FOR DENIAL OF APPLICATION**

7 **(Dangerous Use of Alcohol on March 14, 2010)**

8 18. Respondent's application is subject to denial under section 480, subdivision (a)(3)(A)
9 of the Code in that he used alcohol on March 14, 2010, and drove a motor vehicle while impaired
10 by alcohol as described in paragraph 17, above. Said conduct was dangerous or injurious to
11 himself and to the public, and would be a ground for discipline under section 4301, subdivision
12 (h) of the Code for a registered pharmacy technician.

13 **THIRD CAUSE FOR DENIAL OF APPLICATION**

14 **(Dangerous Use of an Illegal Controlled Substance on February 13, 2014)**

15 19. Respondent's application is subject to denial under section 480, subdivision (a)(3)(A)
16 of the Code in that he used the illegal controlled substance methamphetamine on February 13,
17 2014. Said conduct was dangerous or injurious to himself and to the public, and would be a
18 ground for discipline under section 4301, subdivision (h) of the Code for a registered pharmacy
19 technician.

20 a. On or about the evening of February 13, 2014, two deputies with the Riverside
21 County Sheriff's Department were patrolling the city of Perris when they observed Respondent
22 riding a bicycle without a light. Upon stopping Respondent, the deputies observed that
23 Respondent's pupils were dilated, his tongue had a white, pasty coating, his speech was rapid, his
24 pulse was elevated, and he was behaving strangely. On the ground, directly underneath where
25 Respondent was standing, the deputies recovered a small plastic baggie that contained a white

26 ¹ Teen Education Mentoring Program Option (TEMPO) is an early intervention
27 educational program geared for at-risk teens 13-19 years of age. Teens participate in 20-hours of
28 programming which exposes them to the legal, financial, emotional and social consequences of
making negative choices as it relates to drug and alcohol use/abuse.

1 crystal substance that tested positive for methamphetamine. Respondent was arrested for
2 possession of a controlled substance, and being under the influence of a controlled substance.
3 During booking, Respondent was subjected to a drug influence evaluation. He told the deputy he
4 had not used methamphetamine in over a year. He provided a urine sample which subsequently
5 tested positive for amphetamine and methamphetamine.

6 b. As a result of the arrest, on or about February 26, 2014, in a criminal
7 proceeding entitled *People of the State of California vs. Juan De Jesus Avilez, aka Juan De*
8 *Avilez*, in Riverside County Superior Court, case number RIM1402223, Respondent pled guilty to
9 possession of methamphetamine (Health & Saf. Code, § 11377(a)), a misdemeanor. The court
10 dismissed an additional count of being under the influence of a controlled substance (Health &
11 Saf. Code, § 11550(a)), pursuant to a plea agreement.

12 c. As a result of the plea, the court deferred entry of judgment for 18 months, and
13 Respondent was referred to a drug diversion program pursuant to Penal Code section 1000. At a
14 hearing on August 26, 2015, the court set aside Respondent's guilty plea, and the conviction was
15 dismissed.

16 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

17 **(Violation of Statutes Regulating Controlled Substances)**

18 20. Respondent's application is subject to denial under section 480, subdivision (a)(3)(A)
19 of the Code in that he violated California statutes regulating controlled substances and dangerous
20 devices when he possessed methamphetamine, and was under the influence of methamphetamine
21 on February 13, 2014, as described in paragraph 19, above, in violation of Business and
22 Professions Code section 4060, and Health and Safety Code sections 11377, subdivision (a), and
23 11550, subdivision (a). Said conduct would be grounds for discipline under section 4301,
24 subdivision (j) of the Code for a registered pharmacy technician.

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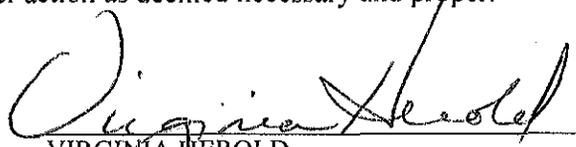
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PRAYER

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 Juan de Jesus Avilez for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 11/4/15 

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

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