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

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

Case No. SI 5637

14 **XENIA JANE POBRE ELMIDO**

STATEMENT OF ISSUES

15 **Applicant for Pharmacy Technician License**

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 December 18, 2014, the Board of Pharmacy, Department of Consumer
22 Affairs received an application for a Pharmacy Technician license from Xenia Jane Pobre Elmido
23 (Respondent). On or about December 15, 2014, Respondent certified under penalty of perjury to
24 the truthfulness of all statements, answers, and representations in the application. The Board
25 denied the application on or about September 15, 2015.

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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 unless otherwise indicated.

STATUTORY AND REGULATORY PROVISIONS

4. Section 4300 of the Code states:

" . . .

"(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 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:

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

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

. . ."

6. 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."

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FACTUAL BACKGROUND

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2 7. On or about January 30, 2010, while employed as a licensed Psychiatric Technician¹
3 with Napa State Hospital (NSH), Respondent purchased and delivered a cell phone to a patient in
4 exchange for \$200.00. The patient was housed in a unit at NSH where possession of cell phones
5 by patients is prohibited. From January 30, 2010, to February 1, 2010, Respondent communicated
6 with the patient and received communications from the patient on the cell phone that she
7 delivered to him.

8 8. Respondent also purchased tobacco² for the patient and shared in the patient's profits
9 from the sale of the tobacco to other NSH patients.

10 9. On or about May 27, 2010, the BVNPT mailed a letter to Respondent at her address
11 of record. The letter was returned on June 16, 2010, as undelivered with no known forwarding
12 address.

13 10. On or about January 12, 2011, the BVNPT filed and served an Accusation on
14 Respondent. The BVNPT's Accusation was based on Respondent's conduct described in
15 paragraphs 8, 9, and 10, above. On or about May 26, 2011, Respondent's Psychiatric Technician
16 license was revoked by a Default Decision and Order issued by the BVNPT.

17 11. On or about June 24, 2015, Respondent's Petition for Reinstatement of her
18 Psychiatric Technician's license was granted. However, prior to reinstatement, Respondent was
19 ordered to comply with the condition that within sixty (60) days of the effective date of the
20 decision granting her petition, she submitted to a psychiatric/psychological evaluation; and that
21 within two (2) years of the effective date of the Decision, she take and pass the licensure
22 examination currently required of Psychiatric Technician license applicants.

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27 ¹ Respondent was issued Psychiatric Technician's license No. 31654 by the Board of
28 Vocational Nursing and Psychiatric Technicians (BVNPT).

² Tobacco is a prohibited substance pursuant to NSH rules and regulations.

1 FIRST CAUSE FOR DENIAL OF APPLICATION

2 (Unprofessional Conduct)

3 12. Respondent's application is subject to denial under section 480(a)(2) and/or
4 480(a)(3)(A), in that Respondent committed an act involving dishonesty and deceit for her own
5 monetary benefit when she obtained a prohibited cell phone for a patient at Napa State Hospital
6 where she was employed as a licensed Psychiatric Technician, as set forth in paragraph 7, above.
7 Such conduct, if done by a licensed Pharmacy Technician, would be grounds for suspension or
8 revocation of licensure.

9 SECOND CAUSE FOR DENIAL OF APPLICATION

10 (Unprofessional Conduct)

11 13. Respondent's application is subject to denial under section 480(a)(2) and/or
12 480(a)(3)(B), in that Respondent committed an act involving dishonesty and deceit for her own
13 monetary benefit when she obtained tobacco for a patient at Napa State Hospital and then shared
14 in the profits from the sale of tobacco to other patients, as set forth in paragraph 8, above. Such
15 conduct, if done by a licensed Pharmacy Technician, would be grounds for suspension or
16 revocation of licensure.

17 THIRD CAUSE FOR DENIAL OF APPLICATION

18 (Unprofessional Conduct)

19 14. Respondent's application is subject to denial under section 480(a)(3)(B) pursuant to
20 California Code of Regulations, title 16, section 1770, in that Respondent committed acts in
21 violation of the rules and regulations of Napa State Hospital where she was employed as a
22 licensed Psychiatric Technician, as set forth in paragraphs 7 and 8, above.

23 FOURTH CAUSE FOR DENIAL OF APPLICATION

24 (Unprofessional Conduct)

25 15. Respondent's application is subject to denial under section 480(a)(3)(B) pursuant to
26 California Code of Regulations, title 16, section 1770, in that Respondent committed acts in
27 violation of the statutes and regulations governing her practice as a licensed Psychiatric
28 Technician, as set forth in paragraphs 7, 8, 9, and 10, above.

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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 Xenia Jane Pobre Elmido for a Pharmacy Technician's license;
2. Taking such other and further action as deemed necessary and proper.

DATED: 11/23/15 Virginia Herold
VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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