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8  
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:  
13 **BRYCE A. DAVIS**  
14 **Pharmacy Technician Registration**  
15 **Applicant**  
16 Respondent.

Case No. 6077  
**FIRST AMENDED STATEMENT OF**  
**ISSUES**

17  
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about August 23, 2016, the Board received an application for a Pharmacy  
24 Technician Registration from Bryce A. Davis (Respondent). On or about August 15, 2016, Bryce  
25 A. Davis certified under penalty of perjury to the truthfulness of all statements, answers, and  
26 representations in the application. The Board denied the application on February 10, 2017.

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1 **JURISDICTION**

2 3. This First Amended Statement of Issues is brought before the Board under the  
3 authority of the following laws. All section references are to the Business and Professions Code  
4 (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. The board may, in its sole  
7 discretion, issue a probationary license to any applicant for a license who is guilty of  
8 unprofessional conduct and who has met all other requirements for licensure.

9 **STATUTORY PROVISIONS**

10 5. Section 475 of the Code states:

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

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

15 (2) Conviction of a crime.

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

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

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

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

26 6. Section 480 of the Code states:

27 (a) A board may deny a license regulated by this code on the grounds that the  
28 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. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

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

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

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

8 (b) Notwithstanding any other provision of this code, a person shall not be denied  
9 a license solely on the basis that he or she has been convicted of a felony if he or she  
10 has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section  
11 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of  
12 a misdemeanor if he or she has met all applicable requirements of the criteria of  
13 rehabilitation developed by the board to evaluate the rehabilitation of a person when  
14 considering the denial of a license under subdivision (a) of Section 482.

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

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

23 7. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by a  
25 board within the department pursuant to law to deny an application for a license or to  
26 suspend or revoke a license or otherwise take disciplinary action against a person who  
27 holds a license, upon the ground that the applicant or the licensee has been convicted  
28 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."

8. 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 issued by mistake. Unprofessional  
conduct shall include, but is not limited to, any of the following:

...

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

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(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. . .

**REGULATORY PROVISIONS**

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

...

(b) When considering the denial of a facility or personal license under Section 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).
- (4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant. . .

10. 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

1 functions authorized by his license or registration in a manner consistent with the public  
2 health, safety, or welfare.

3 **FIRST CAUSE FOR DENIAL OF APPLICATION**

4 **(December 13, 2016 Criminal Conviction for Cultivating Marijuana on May 18, 2015)**

5 11. Respondent's application for licensure is subject to denial under section 480,  
6 subdivisions (a)(1) and (a)(3)(A) of the Code in that he was convicted of a crime that is  
7 substantially related to the qualifications, duties, and functions of a registered pharmacy  
8 technician. Said conviction would be grounds for discipline under section 4301, subdivision (l) of  
9 the Code for a registered pharmacy technician. The circumstances are as follows:

10 a. On December 13, 2016, in a criminal proceeding entitled, *People of the State of*  
11 *California v. Bryce Anthony Davis*, in Riverside County Superior Court, case number  
12 BAF1500799, Respondent was convicted on his plea of guilty of violating Health and Safety  
13 Code section 11358, cultivating marijuana, a felony which the court agreed to reduce to a  
14 misdemeanor pursuant to Proposition 64.<sup>1</sup>

15 b. As a result of the conviction, Respondent was ordered to serve two days in  
16 county jail with pre-custody credit for two days for time served, and to pay fines and fees in the  
17 amount of \$220.

18 c. The facts that led to the conviction are that on May 18, 2015, deputies with the  
19 Riverside County Sheriff's Department (RCSD), Southwest Corridor Narcotics Task Force,  
20 served a narcotics related search warrant in Hemet, California. During the search warrant, RCSD  
21 deputies made contact with Respondent and a co-defendant inside the target residence. RCSD  
22 deputies located 85 live marijuana plants in a bedroom that was converted into a grow room, and  
23 several large green houses on the property containing live marijuana plants. During a search of  
24 Respondent's bedroom, the RCSD deputies located approximately 33 grams of honey oil, three

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26 \_\_\_\_\_  
27 <sup>1</sup> California Proposition 64, also referred to as "the Adult Use of Marijuana Act," was on  
28 the November 8, 2016 ballot in California as an initiated state statute. Proposition 64 made it  
legal for adults aged 21 years or older to use and grow marijuana for personal use beginning  
November 9, 2016.

1 plastic baggies containing marijuana weighing approximately 7.2 pounds, honey oil on top of the  
2 nightstand, and a digital scale. During the investigation, Respondent claimed to be living at that  
3 residence with the agreement that he would grow marijuana plants for an unknown male  
4 nicknamed "Old Man," and in return he would receive approximately 15 percent of the total  
5 weight of the marijuana as payment. Respondent estimated that he would have received 15  
6 pounds of processed marijuana as payment, which he would then sell to a local marijuana  
7 dispensary and get paid approximately \$1,500 per pound, totaling \$22,500. Respondent was  
8 arrested for cultivating marijuana.

9 **SECOND CAUSE FOR DENIAL OF APPLICATION**

10 **(Violation of State & Federal Statutes Regulating Controlled Substances)**

11 12. Respondent's application for licensure is subject to denial under section 480,  
12 subdivision (a)(3)(A) of the Code in that he violated state (Health and Safety Code section 11358)  
13 and federal (Title 21, U.S.C., section 841) statutes regulating controlled substances, when he  
14 cultivated/manufactured marijuana, as described in paragraph 11 above, and incorporated herein  
15 by reference. Said violation would be grounds for discipline under section 4301, subdivision (j) of  
16 the Code for a registered pharmacy technician.

17 **THIRD CAUSE FOR DENIAL OF APPLICATION**

18 **(General Unprofessional Conduct)**

19 13. Respondent's application for licensure is subject to denial under section 480,  
20 subdivision (a)(3)(A) of the Code for committing acts constituting unprofessional conduct when  
21 he illegally cultivated/manufactured marijuana with the intent to sell a percentage of that  
22 marijuana for profit, acts that if done by a licensee would be grounds for suspension or revocation  
23 of license under section 4301 of the Code.

24 **PRAYER**

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
26 and that following the hearing, the Board of Pharmacy issue a decision:

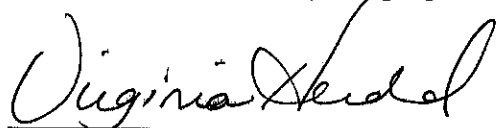
27 1. Denying the application of Bryce A. Davis for a Pharmacy Technician Registration;

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

DATED: 7/10/17



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

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9 **BEFORE THE**  
**BOARD OF PHARMACY**  
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11 In the Matter of the Statement of Issues  
12 Against:

Case No. 6077

13 **BRYCE A. DAVIS**

**STATEMENT OF ISSUES**

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

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about August 23, 2016, the Board received an application for a Pharmacy  
24 Technician Registration from Bryce A. Davis (Respondent). On or about August 15, 2016, Bryce  
25 A. Davis certified under penalty of perjury to the truthfulness of all statements, answers, and  
26 representations in the application. The Board denied the application on February 10, 2017.

27 ///

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## JURISDICTION

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2       3.    This Statement of Issues is brought before the Board under the authority of the  
3 following laws. All section references are to the Business and Professions Code (Code) unless  
4 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. The board may, in its sole  
7 discretion, issue a probationary license to any applicant for a license who is guilty of  
8 unprofessional conduct and who has met all other requirements for licensure.

## STATUTORY PROVISIONS

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10       5.    Section 475 of the Code states:

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

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

15               (2) Conviction of a crime.

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

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

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

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

26       6.    Section 480 of the Code states:

27           (a) A board may deny a license regulated by this code on the grounds that the  
28 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. Any action that a board is permitted to take following the establishment  
of a conviction may be taken 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  
the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

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

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

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

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

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

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

23 7. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by a  
25 board within the department pursuant to law to deny an application for a license or to  
26 suspend or revoke a license or otherwise take disciplinary action against a person who  
27 holds a license, upon the ground that the applicant or the licensee has been convicted  
28 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."

8. 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 issued by mistake. Unprofessional  
conduct shall include, but is not limited to, any of the following:

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

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(1) 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. . .

**REGULATORY PROVISIONS**

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

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(b) When considering the denial of a facility or personal license under Section 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).

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

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

10. 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

1 functions authorized by his license or registration in a manner consistent with the  
2 public health, safety, or welfare.

3 **FIRST CAUSE FOR DENIAL OF APPLICATION**

4 **(December 13, 2016 Criminal Conviction for Cultivating Marijuana on May 18, 2015)**

5 11. Respondent's application for licensure is subject to denial under section 480,  
6 subdivisions (a)(1) and (a)(3)(A) of the Code in that he was convicted of a crime that is  
7 substantially related to the qualifications, duties, and functions of a registered pharmacy  
8 technician. Said conviction would be grounds for discipline under section 4301, subdivision (l) of  
9 the Code for a registered pharmacy technician. The circumstances are as follows:

10 a. On December 13, 2016, in a criminal proceeding entitled, *People of the State of*  
11 *California v. Bryce Anthony Davis*, in Riverside County Superior Court, case number  
12 BAF1500799, Respondent was convicted on his plea of guilty of violating Health and Safety  
13 Code section 11358, cultivating marijuana, a felony which the court agreed to reduce to a  
14 misdemeanor pursuant to Proposition 64.<sup>1</sup>

15 b. As a result of the conviction, Respondent was ordered to serve two days in  
16 county jail with pre-custody credit for two days for time served, and to pay fines and fees in the  
17 amount of \$220.

18 c. The facts that led to the conviction are that on May 18, 2015, deputies with the  
19 Riverside County Sheriff's Department (RCSD), Southwest Corridor Narcotics Task Force,  
20 served a narcotics related search warrant in Hemet, California. During the search warrant, RCSD  
21 deputies made contact with Respondent and a co-defendant inside the target residence. RCSD  
22 deputies located 85 live marijuana plants in a bedroom that was converted into a grow room, and  
23 several large green houses on the property containing live marijuana plants. During a search of  
24 Respondent's bedroom, the RCSD deputies located approximately 33 grams of honey oil, three  
25 ///

26 <sup>1</sup> California Proposition 64, also referred to as "the Adult Use of Marijuana Act," was on  
27 the November 8, 2016 ballot in California as an initiated state statute. Proposition 64 made it  
28 legal for adults aged 21 years or older to use and grow marijuana for personal use beginning  
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1 plastic baggies containing marijuana weighing approximately 7.2 pounds, honey oil on top of the  
2 nightstand, and a digital scale. During the investigation, Respondent claimed to be living at that  
3 residence with the agreement that he would grow marijuana plants for an unknown male  
4 nicknamed "Old Man," and in return he would receive approximately 15 percent of the total  
5 weight of the marijuana as payment, which he would then sell to a local marijuana dispensary.  
6 Respondent was arrested for cultivating marijuana.

7 **SECOND CAUSE FOR DENIAL OF APPLICATION**

8 **(Violation of State Statute Regulating Controlled Substances)**

9 12. Respondent's application for licensure is subject to denial under section 480,  
10 subdivision (a)(3)(A) of the Code in that he violated a state statute regulating controlled  
11 substances. On May 18, 2015, Respondent was arrested for cultivating marijuana, a violation of  
12 Health and Safety Code, section 11358, as described in paragraph 11 above, and incorporated  
13 herein by reference. Said violation would be grounds for discipline under section 4301,  
14 subdivision (j) of the Code for a registered pharmacy technician.

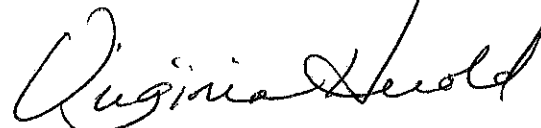
15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
17 and that following the hearing, the Board of Pharmacy issue a decision:

- 18 1. Denying the application of Bryce A. Davis for a Pharmacy Technician Registration;  
19 2. Taking such other and further action as deemed necessary and proper.

20  
21 DATED: \_\_\_\_\_

5/8/17



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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