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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. 6227

13 **JONATHAN BURRUEL**

STATEMENT OF ISSUES

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

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 July 1, 2016, the Board received an application for a Pharmacy
24 Technician Registration from Jonathan Burruel (Respondent). On or about June 28, 2016,
25 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and
26 representations in the application. The Board denied the application on July 7, 2017.

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

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

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

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

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

21 7. Section 482 of the Code states:

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

24 (a) Considering the denial of a license by the board under Section 480; or

25 (b) Considering suspension or revocation of a license under Section 490.

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

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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1 9. Section 493 of the Code states:

2 Notwithstanding any other provision of law, in a proceeding conducted by a board
3 within the department pursuant to law to deny an application for a license or to suspend
4 or revoke a license or otherwise take disciplinary action against a person who holds a
5 license, upon the ground that the applicant or the licensee has been convicted of a crime
6 substantially related to the qualifications, functions, and duties of the licensee in
7 question, the record of conviction of the crime shall be conclusive evidence of the fact
8 that the conviction occurred, but only of that fact, and the board may inquire into the
9 circumstances surrounding the commission of the crime in order to fix the degree of
10 discipline or to determine if the conviction is substantially related to the qualifications,
11 functions, and duties of the licensee in question.

12 As used in this section, "license" includes "certificate," "permit," "authority," and
13 "registration."

14 10. Section 822 of the Code states:

15 If a licensing agency determines that its licentiate's ability to practice his or her
16 profession safely is impaired because the licentiate is mentally ill, or physically ill
17 affecting competency, the licensing agency may take action by any one of the following
18 methods:

19 (a) Revoking the licentiate's certificate or license.

20 (b) Suspending the licentiate's right to practice.

21 (c) Placing the licentiate on probation.

22 (d) Taking such other action in relation to the licentiate as the licensing agency in
23 its discretion deems proper.

24 The licensing section shall not reinstate a revoked or suspended certificate or
25 license until it has received competent evidence of the absence or control of the
26 condition which caused its action and until it is satisfied that with due regard for the
27 public health and safety the person's right to practice his or her profession may be safely
28 reinstated.

11. 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:

...

(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.

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1 (I) The conviction of a crime substantially related to the qualifications, functions,
2 and duties of a licensee under this chapter. The record of conviction of a violation of
3 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
4 regulating controlled substances or of a violation of the statutes of this state regulating
5 controlled substances or dangerous drugs shall be conclusive evidence of unprofessional
6 conduct. In all other cases, the record of conviction shall be conclusive evidence only of
7 the fact that the conviction occurred. The board may inquire into the circumstances
8 surrounding the commission of the crime, in order to fix the degree of discipline or, in
9 the case of a conviction not involving controlled substances or dangerous drugs, to
10 determine if the conviction is of an offense substantially related to the qualifications,
11 functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a
12 conviction following a plea of nolo contendere is deemed to be a conviction within the
13 meaning of this provision. The board may take action when the time for appeal has
14 elapsed, or the judgment of conviction has been affirmed on appeal or when an order
15 granting probation is made suspending the imposition of sentence, irrespective of a
16 subsequent order under Section 1203.4 of the Penal Code allowing the person to
17 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the
18 verdict of guilty, or dismissing the accusation, information, or indictment . . .

11 REGULATORY PROVISIONS

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

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

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

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

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

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

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

27 13. California Code of Regulations, title 16, section 1770 states:

28 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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1 FIRST CAUSE FOR DENIAL OF APPLICATION

2 (June 1, 2005 Criminal Conviction for Battery on May 18, 2005)

3 14. Respondent's application for registration as a pharmacy technician is subject to denial
4 under section 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that he was convicted of a
5 crime that is substantially related to the qualifications, duties, and functions of a pharmacy
6 technician, and would be grounds for discipline under section 4301(l) of the Code for a
7 Registered Pharmacy Technician. The circumstances are as follows:

8 a. On or about June 1, 2005, in a criminal proceeding entitled *People of the State*
9 *of California v. Jonathan Burruel*, San Bernardino County Superior Court case number
10 MWV097438, Respondent was convicted on his plea of nolo contendere of violating of Penal
11 Code section 242, battery, a misdemeanor.

12 b. As a result of the conviction, Respondent was granted probation for two years,
13 and ordered to serve fifteen days in county jail with a pre-custody credit of fifteen days for time
14 served. Respondent was further ordered not to harm the victim in any manner, and to pay fines
15 and fees.

16 c. The facts that led to the conviction are that on May 18, 2005, at approximately
17 4:04 in the afternoon, an officer with the San Bernardino County Sheriff's Department (SBCS)
18 was dispatched to a local business parking lot near Rancho Cucamonga, after multiple 911 calls
19 were received in reference to Respondent pushing his elderly father to the ground, while yelling
20 profanities outside of their place of business. Upon arriving to the scene, the SBCS officer
21 observed the victim lying on the ground unable to stand or walk on his own. During the
22 investigation, Respondent stated that he had an argument with his father, and admitted to pushing
23 his father to the ground. Respondent was arrested on charges of elder abuse (Pen. Code, § 368),
24 and assault with a deadly weapon (Pen. Code, § 245).

25 d. On or about August 26, 2014, the criminal conviction was dismissed pursuant
26 to Penal Code section 1203.4, subdivision (a).

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1 evaluation on June 7, 2017, that resulted in a determination that Respondent's ability to practice
2 safely as a pharmacy technician is impaired, and would be grounds for discipline under section
3 822 of the Code for a Registered Pharmacy Technician.

4 **PRAYER**

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

- 7 1. Denying the application of Jonathan Burruel for a Pharmacy Technician Registration;
8 2. Taking such other and further action as deemed necessary and proper.

9
10 DATED: 8/29/17



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

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