

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

In the Matter of the Statement of Issues  
Against:

SALVADOR FERNANDO SILVA,

Respondent.

Case No. 5420

OAH No. 2015050565

**DECISION AND ORDER**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on July 31, 2015.

It is so ORDERED on July 1, 2015.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
AMARYLIS GUTIERREZ  
Board President

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Respondent.

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**PROPOSED DECISION**

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on May 28, 2015, in Sacramento, California.

Phillip L. Arthur, Deputy Attorney General, represented Virginia Herold (complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Salvador Fernando Silva (respondent) represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on May 28, 2015.

**FACTUAL FINDINGS**

1. On May 9, 2014, the Board received a Pharmacy Technician Application from respondent. The Board denied respondent's application on January 7, 2015. Respondent appealed from the denial. Complainant seeks to deny respondent's application based upon his 2002 conviction for possession of methamphetamine for sale and the circumstances surrounding that conviction.

*Respondent's Conviction*

2. On May 23, 2002, in San Joaquin County Superior Court, respondent, on a plea of guilty, was convicted of violating Health and Safety Code section 11378, possession for sale of a controlled substance (methamphetamine), a felony. Respondent was ordered to serve 180 days in jail, and was given credit for four days served. He was placed on formal

probation for five years. He was required to register as a narcotics offender under Health and Safety Code section 11590. He was ordered to pay fines and fees.

3. As described in the arrest report from the Lodi Police Department,<sup>1</sup> the incident underlying respondent's conviction occurred on April 9, 2002. At that time, respondent was 22 years old. The arrest report reflects that the police went to the home where respondent lived with his mother and brothers to conduct a probation search.<sup>2</sup> At home were respondent and his 18-year-old brother. When the police searched the bedroom of respondent's 18-year-old brother, in the nightstand next to the bed they found a Tupperware container that held several small baggies containing a substance the police identified as methamphetamine. In a closet, the police found a backpack that contained more baggies with methamphetamine and an operable electronic scale.

After the police put respondent's 18-year-old brother in the patrol car, respondent told the police that the methamphetamine belonged to him. According to the arrest report, respondent stated that his 18-year-old brother "knew nothing about the drugs, and that he [respondent] put them there about two days ago." The arrest report also reflected that respondent told the police that "he only sells a little," and that he only sold "grams." The police estimated that the street value of the methamphetamine was approximately \$1,520.

4. At the hearing, respondent admitted that he told the police that the methamphetamine belonged to him, but he denied that he told them that he sold methamphetamine.

5. Respondent served the jail time ordered by the court and paid all his fines and fees. On April 22, 2008, respondent's guilty plea was set aside, and his felony conviction was dismissed under Penal Code section 1203.4.

#### *Respondent's Rehabilitation*

6. Respondent denied that he ever used methamphetamine or any other illegal controlled substances. He admitted that he used phentermine one time a while ago as a dietary supplement to help with weight loss. He testified that he stopped using phentermine after taking just one tablet when a pharmacist friend told him that it was not the proper way to lose weight.

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<sup>1</sup> The arrest report was admitted pursuant to the *Lake v. Reed* (1997) 16 Cal.4th 448: The percipient observations of the police officers and the admissions of respondent were admitted as direct evidence; the statements of third parties were admitted as administrative hearsay under Government Code section 11513, subdivision (d).

<sup>2</sup> It was not clear from the arrest report which individual living at the home was on probation, but it did not appear to be respondent. There was no indication in the arrest report or at hearing that respondent had any prior criminal record.

7. Respondent admitted that he used "bad judgment" when he was younger. He accepted that he was "accountable" for his past misconduct. He asserted that he rehabilitated himself on his own. Because he did not use controlled substances, he was not ordered by the court to attend a drug rehabilitation program. He no longer associates with the friends he had when he was arrested. He has removed himself from people who were involved with drugs. He has made new friends.

8. It has been difficult for respondent to find full-time work since his conviction. In the early 2000's, he worked at McDonald's and Tony's Pizzeria. From 2003 to 2006, he worked as a lot porter for Lodi Toyota. He stopped working there because he was being paid minimum wage and had no opportunity for advancement. From 2008 through 2010, he worked seasonally for H&R Block as a "tax pro." Since 2003, he has worked on an on-call basis for his uncle's landscaping business. Since the middle of last year, he has been a care provider for his nephew. At the beginning of May, he began working seasonally for West Wind Farms as a forklift driver.

9. For two seasons beginning in 2010, respondent volunteered as an assistant football coach for the Lodi Junior Flames, a team for eight to ten year olds. Respondent then volunteered as a football coach for the City of Lodi Bobcats, a Parks and Recreation Department team for eight to ten year olds. Last season, he coached Tokay High School's Junior Tigers football team.

10. Respondent attended Heald College from September 2011 until he graduated in May 2014 with an associate degree in Pharmacy Technology. While at Heald, he had an externship with Omnicare Pharmacy in Lodi. Jonathan McComb, Omnicare's Dispensing Supervisor, wrote a letter of support for respondent, which was admitted as administrative hearsay and has been considered to the extent permitted under Government Code section 11513, subdivision (d).<sup>3</sup> Mr. McComb has known respondent for 19 years. He described respondent as a "person of good moral character," who "loves to help people." Mr. McComb recognized that respondent "made a mistake," but believes that respondent is "incredibly remorseful" and has "made proper reparations to restore his true character." Respondent testified that Omnicare has offered him a job if he obtains his pharmacy technician license.

11. At the hearing, Olga Silva, respondent's mother, testified on respondent's behalf. She recognized that he was involved in a "bad situation early on," but that he has had no convictions since May 2002. Ms. Silva testified that respondent's attendance at Heald

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<sup>3</sup> Government Code section 11513, subdivision (d), in relevant part, provides:

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

College was "close to perfect," and that he studied hard and sought out tutors. She believes that if given the opportunity to become a pharmacy technician, he will do well.

*Discussion*

12. In California Code of Regulations, title 16, section 1769, subdivision (b), the Board has set forth criteria for evaluating the rehabilitation of a license applicant who has been convicted of a crime. These criteria include:

- (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.

13. Respondent's possession of methamphetamine for sale in April 2002 constituted serious wrongdoing. The incident underlying respondent's conviction occurred 13 years ago. Respondent was 22 years old at the time. There was no evidence that respondent has been convicted of any other crimes or engaged in any illegal conduct in the 13 years since that incident. There was no evidence that respondent ever used methamphetamine or any other illegal drugs. Respondent complied with all the terms of his criminal probation and, seven years ago, in April 2008, respondent's conviction was dismissed under Penal Code section 1203.4.

14. In 2014, respondent graduated from Heald College with an associate degree in Pharmacy Technology. While in college, he worked for Omnicare as an extern. Omnicare's Dispensing Supervisor gave him a supportive recommendation.

15. At the hearing, respondent testified in a direct and humble fashion. He took responsibility for his criminal conduct. In the 13 years since his conviction, he has learned from his wrongdoing and changed his life. He has tried to remain employed and has worked for a number of different employers. He has engaged in volunteer activities coaching youngsters in football. He disclosed his conviction on his application. When the rehabilitation criteria set forth in California Code of Regulations, title 16, section 1769,

subdivision (b), are considered, respondent established that it would be consistent with the public health, safety and welfare to grant him a pharmacy technician license on a probationary basis for five years under the terms and conditions set forth below.

## LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 480, subdivision (a)(1), a license application may be denied when the applicant has been “convicted of a crime” that is substantially related to the qualifications, functions or duties of the business or profession for which application was made. Pursuant to Business and Professions Code section 4301, subdivision (l), the Board may deny a license to an applicant who has been convicted “of a crime substantially related to the qualifications, functions, and duties of” a Board licensee.

2. Effective January 1, 2015, Business and Professions Code section 480 was amended to include a new subdivision (c), which provides:

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

3. On April 22, 2008, respondent’s 2002 conviction for possession of methamphetamine for sale was dismissed under Penal Code section 1203.4. Business and Professions Code section 480, subdivision (c), precludes complainant from denying respondent a license solely on the basis of his dismissed conviction. Consequently, complainant failed to establish cause to deny respondent’s application under Business and Professions Code sections 480, subdivision (a)(1), and 4301, subdivision (l).

4. Pursuant to Business and Professions Code section 480, subdivision (a)(3)(A), the Board may deny a license application when the applicant has 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.” Business and Professions Code section 4060, in relevant part, provides that a “person shall not possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor....” Health and Safety Code section 11055, subdivision (d)(2), defines methamphetamine to be a controlled substance. Respondent’s possession of methamphetamine on April 9, 2002, would constitute grounds to suspend or revoke a pharmacy license under Business and Professions Code section 4060. Consequently, complainant established cause to deny respondent’s application under Business and Professions Code section 480, subdivision (a)(3)(A).

5. Pursuant to Business and Professions Code section 4300, subdivision (c), the Board may refuse to issue a license to an “applicant guilty of unprofessional conduct.” Business and Professions Code section 4301, subdivision (a), defines “unprofessional conduct” to include “[g]ross immorality.” Complainant did not provide sufficient legal support at the hearing to establish that possession of methamphetamine for sale constitutes “gross immorality.” Consequently, complainant did not establish cause to deny respondent’s application under Business and Professions Code sections 4300, subdivision (c), and 4301, subdivision (a).

6. Business and Professions Code section 4301, subdivision (f), defines “unprofessional conduct” to include the “commission of any act involving moral turpitude.” Possession of a controlled substance for sale constitutes a crime involving moral turpitude. (*People v. Castro* (1985) 38 Cal.3d 301, 317; *Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1027-1029.) Complainant therefore established cause to deny respondent’s application under Business and Professions Code sections 4300, subdivision (c), and 4301, subdivision (f).

7. Business and Professions Code section 4301, subdivision (j), defines “unprofessional conduct” to include 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.” Respondent’s possession of methamphetamine for sale violated Health and Safety Code section 11378. Complainant therefore established cause to deny respondent’s application under Business and Professions Code sections 4300, subdivision (c), and 4301, subdivision (j).

8. As set forth in Findings 13 through 15, when the rehabilitation criteria included in California Code of Regulations, title 16, section 1769, subdivision (b), are considered, respondent established that it would be consistent with the public health, safety and welfare to grant him a pharmacy technician license on a probationary basis for five years under the terms and conditions set forth below.

## ORDER

The Pharmacy Technician Application submitted by respondent Salvador Fernando Silva is GRANTED. Upon satisfaction of all statutory and regulatory requirements for issuance of a license, a license shall be issued to respondent and immediately revoked; the order of revocation is stayed and respondent is placed on probation for five (5) years upon the following terms and conditions:

### 1. **Certification Prior to Resuming Work**

Respondent shall be automatically suspended from working as a pharmacy technician until he or she is certified as defined by Business and Professions Code section 4202(a)(4) and provides satisfactory proof of certification to the Board. Respondent shall not resume

working as a pharmacy technician until notified by the Board. Failure to achieve certification within one (1) year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the Board.

During suspension, respondent shall not enter any pharmacy area or any portion of any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the Board in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

## **2. Obey All Laws**

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

## **3. Report to the Board**

Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among



other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

#### **4. Interview with the Board**

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear at two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

#### **5. Cooperate with Board Staff**

Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of his or her probation. Failure to cooperate shall be considered a violation of probation.

#### **6. Notice to Employers**

During the period of probation, respondent shall notify all present and prospective employers of the decision in this case and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his or her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in this case and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his or her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in this case in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy

employment service, respondent shall cause his or her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in this case and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the Board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether respondent is considered an employee, independent contractor or volunteer.

#### **7. Probation Monitoring Costs**

Respondent shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

#### **8. Status of License**

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

#### **9. License Surrender While on Probation/Suspension**

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his or her pharmacy technician license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish his or her pharmacy technician license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

**10. Notification of a Change in Name, Residence Address, Mailing Address or Employment**

Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number.

Failure to timely notify the Board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

**11. Tolling of Probation**

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 20 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 20 hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

“Cessation of work” means calendar month during which respondent is not working for at least 20 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. “Resumption of work” means any calendar month during which respondent is working as a pharmacy technician

for at least 20 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

**12. Violation of Probation**

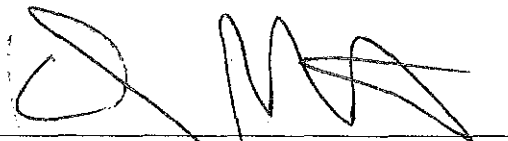
If respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

**13. Completion of Probation**

Upon written notice by the Board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

DATED: June 1, 2015



KAREN J. BRANDT  
Administrative Law Judge  
Office of Administrative Hearings

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

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

Case No. 5420

13 **SALVADOR FERNANDO SILVA**

**STATEMENT OF ISSUES**

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

16 Respondent.

17  
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, Department of Consumer Affairs.

22 2. On or about May 9, 2014, the Board of Pharmacy, Department of Consumer Affairs,  
23 received an application for a Pharmacy Technician Registration from Salvador Fernando Silva  
24 (Respondent). On or about May 1, 2014, Respondent certified under penalty of perjury to the  
25 truthfulness of all statements, answers, and representations in the application. The Board denied  
26 the application on January 7, 2015.

27 ///

28 ///

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 unless otherwise indicated.

5 4. On or about February 28, 2015, Respondent requested a hearing to appeal the denial  
6 of his application.

7 **STATUTORY PROVISIONS**

8 5. Section 480 of the Code states, in pertinent part:

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

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

17 "...

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

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

23 6. Section 4060 of the Code states, in pertinent part:

24 "No person shall possess any controlled substance, except that furnished to a person upon  
25 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
26 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse  
27 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
28 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,

1 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
2 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not  
3 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
4 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
5 nurse midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
6 labeled with the name and address of the supplier or producer. . . .”

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

8 “(a) Every license issued may be suspended or revoked.

9 “... .

10 “(c) The board may refuse a license to any applicant guilty of unprofessional conduct. . . .”

11 8. Section 4301 of the Code states, in pertinent part:

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

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

15 “(a) Gross immorality.

16 “... .

17 “

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

21 “... .

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

24 “... .

25 “(l) The conviction of a crime substantially related to the qualifications, functions, and  
26 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
27 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
28 substances or of a violation of the statutes of this state regulating controlled substances or

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

#### 14 HEALTH AND SAFETY CODE

15 9. California Health and Safety Code section 11055 states, in pertinent part:

16 “(a) The controlled substances listed in this section are included in Schedule II.

17 “. . .

18 “(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any  
19 material, compound, mixture, or preparation which contains any quantity of the following  
20 substances having a stimulant effect on the central nervous system:

21 “. . .

22 “(2) Methamphetamine, its salts, isomers, and salts of its isomers. . . .”

23 10. California Health and Safety Code section 11378 states, in pertinent part:

24 “Except as otherwise provided in Article 7 (commencing with Section 4110) of Chapter 9  
25 of Division 2 of the Business and Professions Code, a person who possesses for sale a controlled  
26 substance that meets any of the following criteria shall be punished by imprisonment pursuant to  
27 subdivision (h) of Section 1170 of the Penal Code:

28 “. . .





1 slept in the southwest corner bedroom of the residence. During the search of one of the bedrooms  
2 in the residence, an officer discovered a Tupperware container with a tied-off clear plastic  
3 sandwich baggie that held several smaller tied-off clear plastic baggies, each containing a quantity  
4 of tan, pink, and gray powder or rock, later determined to be methamphetamine. In the same  
5 bedroom, an officer found a backpack containing a larger square Tupperware container holding  
6 two boxes of opened, clear, plastic sandwich baggies, and several other baggies, as well as an  
7 operable electronic scale. Following the search, Respondent informed one of the officers that the  
8 methamphetamine belonged to him. Respondent described the container for the  
9 methamphetamine as being purple in color and made of plastic. Respondent described the  
10 methamphetamine as being in three or four baggies, some clear and some pink. Respondent  
11 informed the officer that he only sells a little methamphetamine, and that he only sells grams.  
12 Respondent was arrested and transported to the Lodi Police Department.

13 **SECOND CAUSE FOR DENIAL OF APPLICATION**

14 **(Commission of Act Which If Done By Licentiate Would Be Grounds for Discipline)**

15 14. Respondent's application is subject to denial under sections 480(a)(3)(A) and 4060 of  
16 the Code, in conjunction with sections 11055 and 11378 of the Health and Safety Code, in that on  
17 or about April 9, 2002, Respondent was found to be in possession of a controlled substance,  
18 methamphetamine. The circumstances are described with more particularity in paragraph 13 and  
19 its subpart.

20 **THIRD CAUSE FOR DENIAL OF APPLICATION**

21 **(Unprofessional Conduct—Gross Immorality)**

22 15. Respondent's application is subject to denial under sections 4300, subdivision (c), and  
23 4301, subdivision (a), of the Code in that on or about April 9, 2002, Respondent committed an act  
24 of gross immorality by possessing, for sale, a controlled substance (methamphetamine). The  
25 circumstances are described with more particularity in paragraph 13 and its subpart.

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