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

In the Matter of the Statement of Issues Against:	Case No. 5629
JESSICA MARIE PACHECO,	OAH No. 2016030250
Respondent.	

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 at 5:00 p.m. on September 9, 2016.

It is so ORDERED on August 10, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
Amy Gutierrez, Pharm.D.
Board President

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JESSICA MARIE PACHECO,	OAH No. 2016030250
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PROPOSED DECISION

Administrative Law Judge Gene K. Cheever, Office of Administrative Hearings, heard this matter in Sacramento, California on May 25, 2016.

David E. Brice, Deputy Attorney General, Office of the Attorney General, represented Virginia Herold (complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs (Department).

Jessica Marie Pacheco (respondent) was present and represented herself.

Evidence was received, the record was closed, and the matter was submitted for decision on May 25, 2016.

FACTUAL FINDINGS

1. Complainant brought this Statement of Issues in her official capacity as the Executive Officer of the Board. In February 2015, respondent submitted her application for a pharmacy technician license (Application). On August 26, 2015, the Board denied respondent's Application based upon respondent's conviction and her actions leading to the conviction.

Criminal Conviction

2. On July 20, 2006, respondent was convicted in the Superior Court, County of Marin, Case No. SC146926, on her plea of guilty, to violating Penal Code section 496, subdivision (a) (knowingly receiving stolen property), a felony. The court sentenced respondent to three-years supervised probation (to expire on October 20, 2009), serve 90

days in jail with jail time suspended provided respondent remained in compliance with the terms of her probation, abstain from all use of alcohol and illegal drugs during probation, submit to alcohol and drug testing at the request of any probation or police officer, pay restitution and fines, and participate in treatment programs as directed by her probation officer.

3. The circumstances of the underlying crime occurred on or about April 7, 2006, when police officers responded to the Waters Edge Hotel on a report of subjects using a fraudulent credit card. The officers made contact with respondent. One officer called Citibank and was informed that the credit card number had been reported as stolen. Respondent consented to a search of her purse. The officer found a wooden flip-top box containing a California driver's license and social security card for M.G. and various credit cards in the names of M.G. and J.G. Respondent admitted that, while using methamphetamine, she came across the wooden box full of credit cards in her friend's car, she knew that they were stolen, and she decided to take them to use.

Responsibilities of a Pharmacy Technician

4. Joseph Wong testified on behalf of complainant. Mr. Wong is employed as an inspector for the Board and conducts investigations of cases involving violations of pharmacy laws. He has been a registered pharmacist since 2000. He is familiar with the duties and responsibilities of a pharmacy technician. These duties and responsibilities include assisting a pharmacist with his or her duties, filling prescriptions under the supervision of a pharmacist, handling controlled substances, interacting with patients, billing patients, and taking inventories of controlled substances. Mr. Wong testified it is very important that a pharmacy technician be trustworthy and honest and exercise good judgment. If a pharmacy technician is not trustworthy and honest and cannot exercise good judgment, there is a public safety concern.

Rehabilitation, Mitigation, and Aggravation

5. Respondent testified. She is 29 years old and is a single parent to two minor children. She admitted to her conduct and conviction in 2006. She pled guilty because she believed she was guilty. She took full responsibility for her conduct and was sincere, remorseful and apologetic. She was 19-years old at the time of her arrest. She attributed her conduct to the bad influence of a young man from Bakersfield, with whom she fell in love, and her use of illegal drugs, including methamphetamine. She admitted, however, that none of the above excuses her behavior.

6. After her conviction, respondent completed a five month stay at Center Point, a residential drug and alcohol rehabilitation treatment facility, as required by her probation. She then moved into a transitional clean and sober home affiliated with Center Point for three months. She learned about her addiction issues and recovery.

7. Respondent relapsed in 2008 and violated her probation. Starting in October 2008, she spent three months in jail as a result of the violation.[1] She has been clean since October 2008. After her release, she regularly attended 12 step meetings, as required by her probation officer. Today, she attends one to two 12 step meetings per month and meets with her sponsor one to two times per month, on her own accord. She does not sponsor other addicts because she is a single parent with two young children, is working full-time, and does not feel she has time to do so.

8. In 2009, respondent completed a six-month Calaveras County substance abuse outpatient program required by her probation. She voluntarily attended additional workshops during this time, including: (1) parental education workshop (12 hours); (2) understanding children with ADHD (2 hours); (3) parent education workshop (2 hours); and (4) discipline and guidance – peri natal program (2 hours).

9. In September 2013, respondent was hired as a cashier at Rite Aid. She was promoted to a Wellness Ambassador, where she acts as a liaison between Rite Aid's pharmacy and its customers. In December 2014, Rite Aid gave her a certificate of recognition for her excellent demonstration of Rite Aid's core values, including integrity, honesty, and passion for customers. In 2015, Rite Aid recognized her as a Rite Aid Favorite Pharmacy Team Member based on customers' votes. She now wants to work in Rite Aid's pharmacy. Rite Aid has begun training her as a Pharmacy Technician Trainee. During her employment at Rite Aid, the store has given her two random drug tests, and she tested clean on both tests.

10. In January 2016, respondent found a credit card in a business' parking lot. She turned the credit card in to an assistant manager at the business. The assistant manager provided a handwritten note documenting her act.

11. Respondent is proud of her four-year old daughter and six-year old son. She wants to be a role model for her children and show them that they can better their lives even after making a mistake. After she split with their father, she attended a six-hour course (Co-Parenting Putting Kids First) to learn how to better raise her children in a shared custody arrangement.

Discussion

12. Pursuant to California Code of Regulations, title 16, section 1769, the Board adopted criteria for rehabilitation that are to be considered in deciding whether an application for a pharmacy technician license should be granted or denied.[2] Respondent's conviction

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[1] Prior to this probation violation, respondent had one other violation for not showing up at a scheduled court hearing.

[2] California Code of Regulations, title 16, section 1769, subdivision (b), provides:

and her actions leading to her conviction involved dishonest conduct, illegal drug use, and were serious. These events, however, took place ten-years ago when respondent was 19-years old. Respondent has since taken significant and substantial steps to turn her life around. She has attended and participated in recovery programs. She has remained clean since October 2008 and continues to go to 12-step meetings and meetings with her sponsor. After two probation violations in 2008, she completed her probation in October 2009. She has not had any other contact with law enforcement since 2006. She has paid all restitution and fines. She is currently seeking to expunge her criminal conviction pursuant to Penal Code section 1203.4. She has excelled at her job at Rite Aid. She has tested clean on the two drug tests that Rite Aid has randomly given her. She has had two children, now ages four and six, whom she cares about a great deal and provide motivation for her to remain clean.

13. When the evidence and the rehabilitation criteria set forth in the Code of Regulations are considered, it would not be contrary to the public health, safety and welfare to allow respondent to receive a Pharmacy Technician license on a restricted basis as set forth below.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480 provides as follows:

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

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.

(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 which 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 of the Penal Code.

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

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

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

2. Business and Professions Code section 4301 states:

The Board shall take action against any holder of a license who is guilty of unprofessional conduct .... Unprofessional conduct shall include, but is not limited to, any of the following:

[¶] ... [¶]

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

[¶] ... [¶]

(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 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 qualification, 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.

3. Pursuant to California Code of Regulations, title 16, section 1770, "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." Respondent's 2006 conviction for knowingly receiving stolen property is substantially related to the qualifications, duties and functions of a licensee because her crime evidences a potential unfitness to perform the functions authorized by a pharmacy technician.

4. Cause to deny respondent's Application exists under Business and Professions Code sections 480, subdivision (a)(1), and 4301, subdivision (l), by reason of the matters set forth in Findings 2 and 3. Respondent was convicted of a crime of dishonesty that is substantially related to the qualifications, functions, and duties of a licensed pharmacy technician.

5. Cause to deny respondent's Application exists under Business and Professions Code sections 480, subdivision (a)(3)(A), and 4301, subdivision (l), by reason of the matters set forth in Findings 2 and 3. Respondent's conviction, if done by a licentiate, would be grounds for suspension or revocation of license.

6. Cause to deny respondent's Application exists under Business and Professions Code sections 480, subdivision (a)(2), and 4301, subdivision (f), by reason of the matters set forth in Findings 2 and 3. Respondent engaged in acts involving moral turpitude, dishonesty, fraud, or deceit.

7. The matters set forth in Findings 2 through 13 were considered. It would not be contrary to the public interest, health, or safety to issue respondent a probationary license

at this time. Respondent should be placed on probation for five years with special conditions.

ORDER

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. 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 contendre 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's 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.

2. 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.

3. 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.

4. 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.

5. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number OAH 2016030250 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 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 case number OAH 2016030250 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that 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 her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number OAH 2016030250 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 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 case number OAH 2016030250 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that 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 the respondent is considered an employee, independent contractor or volunteer.

6. 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.

7. 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.

8. 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 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.

9. 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.

10. 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 100 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 100 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 100 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 100 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

11. Violation of Probation

If a 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.

12. Completion of Probation

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

13. No Ownership of Licensed Premises

Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

14. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

15. Random Drug Screening

Respondent, at his or her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee. At all times respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of

probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the board in writing.

16. Work Site Monitor

Within ten (10) days of the effective date of this decision, respondent shall identify a work site monitor, for prior approval by the board, who shall be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the board quarterly. Should the designated work site monitor determine at any time during the probationary period that respondent has not maintained sobriety, she shall notify the board immediately, either orally or in writing as directed. Should respondent change employment, a new work site monitor must be designated, for prior approval by the board, within ten (10) days of commencing new employment. Failure to identify an acceptable initial or replacement work site monitor, or to ensure quarterly reports are submitted to the board, shall be considered a violation of probation.

17. Notification of Departure

Prior to leaving the probationary geographic area designated by the board or its designee for a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation of probation.

18. Abstain from Drugs and Alcohol Use

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that he or she is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

DATED: June 21, 2016

DocuSigned by:
Gene Cheever
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GENE K. CHEEVER
Administrative Law Judge
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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against: **JESSICA MARIE PACHECO** **Pharmacy Technician License Applicant** Respondent.	Case No. 5629 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

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

2. On or about February 26, 2015, the Board received an application for a pharmacy technician license from Jessica Marie Pacheco ("Respondent"). On or about February 20, 2015, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on August 26, 2015.

JURISDICTION/STATUTORY PROVISIONS

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 480 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:

(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.

(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.

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

5. Section 4301 states, in pertinent part:

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:

. . . .

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

. . . .

(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.

FIRST CAUSE FOR DENIAL

(Criminal Conviction)

6. Respondent's application is subject to denial pursuant to section 480, subdivisions (a)(1) and (a)(3)(A), in that on or about July 20, 2006, in the criminal proceeding entitled *People vs. Jessica Marie Pacheco* (Marin County Super. Ct., Case No. SC146926), Respondent pled guilty to violating Penal Code section 496, subdivision (a) (knowingly receiving stolen property), a felony, a crime substantially related to the qualifications, functions, and duties of a pharmacy technician. Respondent's conviction would constitute cause for discipline against her pursuant to section 4301, subdivision (l), were she a licentiate of the Board.

7. The circumstances of the above crime are as follows: On or about April 7, 2006, Tiburon Police Department ("TPD") officers responded to the Waters Edge Hotel on Main Street on a report of subjects using a fraudulent credit card to rent a room. The officers went to the room and located Respondent and a male subject. One of the officers left the room and went to the front desk. The officer called Citibank and was informed that one of the credit card numbers had been reported stolen earlier that morning. The officer contacted the other officers by portable radio and advised them that the stolen credit card number had been used to rent the hotel room. The officer returned to the room and observed that Respondent and the male subject had been detained in handcuffs. The officer asked Respondent for consent to search her purse, and Respondent agreed. Respondent told the officer that she had some medical marijuana in the purse. The officer located a wooden flip-top box in Respondent's purse containing a California driver's license and social security card in the name of victim M. G. and various credit cards in the names of victims M. G. and J. G. Respondent initially told the officers that the items belonged to her grandmother. The officer walked Respondent out to his patrol car and transported her to the TPD. The officer asked Respondent about the credit card number which she and the male subject had used to rent the hotel room. Respondent admitted that they used the card numerous times in the past couple of weeks to rent a U-Haul and to purchase a number of

items. Respondent told the officer that the wooden box and credit cards belonged to her grandmother, then stated, "All right, stop, I lied." Respondent claimed that she did not know where the items came from and that she and the male subject had not used the cards as they had all been declined. Later, the officer transported Respondent and the male subject to the Marin County Jail for booking. Respondent told the officer that a few weeks ago, she was in a friend's car. Respondent's friend went into a house in Stockton, California, to purchase methamphetamine. Respondent stayed in the car and was "tweaking on meth". Respondent came across the wooden box full of credit cards. Respondent stated that she knew they were stolen and decided to take them from her friend to use.

SECOND CAUSE FOR DENIAL

(Dishonesty, Fraud or Deceit)

8. Respondent's application is subject to denial pursuant to section 480, subdivision (a)(2), in that Respondent committed acts involving dishonesty, fraud or deceit with the intent to substantially benefit herself or another, or substantially injure another, as set forth in paragraph 7 above. Respondent's acts would constitute cause for discipline against her pursuant to section 4301, subdivision (f), were she a licentiate of the Board.

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 Jessica Marie Pacheco for a pharmacy technician license;
2. Taking such other and further action as deemed necessary and proper.

DATED: 1/25/16

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

SA2015105379