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

12 In the Matter of the Statement of Issues Against:
13 JIM M. GANN
14 1756 Sattler Dr.
15 Concord, California 94519
16 Applicant for Pharmacy Technician Registration
17 Applicant/Respondent.

Case No. 3190

STATEMENT OF ISSUES

18 Complainant alleges:

19 PARTIES

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

23 2. On or about February 24, 2006, the Board of Pharmacy, Department of
24 Consumer Affairs received an application for a Pharmacy Technician's License from Jim Gann
25 (Applicant/Respondent, hereafter Applicant). The application received by the Board was
26 unsigned and uncertified by the Applicant. On or about November 19, 2006, Applicant Jim
27 Gann certified under penalty of perjury to the truthfulness of all statements, answers, and
28 representations in the application. The Board denied his application on August 8, 2007.

JURISDICTION

3. This Statement of Issues is brought before the Board of Pharmacy (Board),

1 Department of Consumer Affairs, under the authority of the following laws. All section
2 references are to the Business and Professions Code unless otherwise indicated.

3 4. Section 4300 of the Code states in relevant part that:

4 ...

5 (c) The board may refuse a license to any applicant guilty of unprofessional
6 conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a
7 license who is guilty of unprofessional conduct and who has met all other requirements for
8 licensure. The board may issue the license subject to any terms or conditions not contrary to
9 public policy, including, but not limited to, the following:

10 (1) Medical or psychiatric evaluation.

11 (2) Continuing medical or psychiatric treatment.

12 (3) Restriction of type or circumstances of practice.

13 (4) Continuing participation in a board-approved rehabilitation program.

14 (5) Abstention from the use of alcohol or drugs.

15 (6) Random fluid testing for alcohol or drugs.

16 (7) Compliance with laws and regulations governing the practice of pharmacy.

17 (d) The board may initiate disciplinary proceedings to revoke or suspend any
18 probationary certificate of licensure for any violation of the terms and conditions of probation.

19 Upon satisfactory completion of probation, the board shall convert the probationary certificate to
20 a regular certificate, free of conditions.

21 (e) The proceedings under this article shall be conducted in accordance with
22 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code,
23 and the board shall have all the powers granted therein. The action shall be final, except that the
24 propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the
25 Code of Civil Procedure.

26 5. Section 4301 of the Code states in relevant part that unprofessional
27 conduct shall include, but is not limited to, any of the following:

28 ...

1 (k) The conviction of more than one misdemeanor or any felony involving the
2 use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
3 combination of those substances.

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

21 ...
22 6. Section 480 of the Code states, in relevant part, that:

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

25 (1) Been convicted of a crime. A conviction within the meaning of this section
26 means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action
27 which a board is permitted to take following the establishment of a conviction may be taken
28 when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal,

1 or when an order granting probation is made suspending the imposition of sentence, irrespective
2 of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

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

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

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

10 ...
11 (c) A board may deny a license regulated by this code on the ground that the
12 applicant knowingly made a false statement of fact required to be revealed in the application for
13 such license.

14 7. Section 493 of the Code states that, notwithstanding any other provision of
15 law, in a proceeding conducted by a board within the department pursuant to law to deny an
16 application for a license or to suspend or revoke a license or otherwise take disciplinary action
17 against a person who holds a license, upon the ground that the applicant or the licensee has been
18 convicted of a crime substantially related to the qualifications, functions, and duties of the
19 licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact
20 that the conviction occurred, but only of that fact, and the board may inquire into the
21 circumstances surrounding the commission of the crime in order to fix the degree of discipline or
22 to determine if the conviction is substantially related to the qualifications, functions, and duties
23 of the licensee in question.

24 As used in this section, "license" includes "certificate," "permit," "authority," and
25 "registration."

26 8. California Code of Regulations, title 16, section 1770, states, that, for the
27 purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division
28 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be

1 considered substantially related to the qualifications, functions or duties of a licensee or
2 registrant if to a substantial degree it evidences present or potential unfitness of a licensee or
3 registrant to perform the functions authorized by his license or registration in a manner consistent
4 with the public health, safety, or welfare.

5 9. Health and Safety Code section 11377(a), in pertinent part, makes it
6 unlawful for any person to possess a controlled substance specified in subdivision (d) of Health
7 and Safety Code section 11055 unless upon the prescription of a physician, dentist, podiatrist, or
8 veterinarian.

9 10. Health and Safety Code section 11550(a), in pertinent part, makes it
10 unlawful for any person to use or be under the influence of a controlled substance.

11 CONTROLLED SUBSTANCES/DANGEROUS DRUGS

12 11. Section 4021 of the Code states that a "controlled substance" means any
13 substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and
14 Safety Code.

15 12. Section 4022 in the Code, in pertinent part states that "dangerous drug" or
16 dangerous device" means any drug or device unsafe for self-use, except veterinary drugs that are
17 labeled as such.

18 13. **Methamphetamine** is a Schedule II controlled substance as designated by
19 Health and Safety Code section 11055(d)(2), and a dangerous drug as designated by Business and
20 Professions Code section 4022. Methamphetamine contains salts, isomers, and salts of its
21 isomers that have a stimulant effect on the central nervous system.

22 FACTUAL BACKGROUND

23 14. On or about July 6, 1983, in a criminal court proceeding before the
24 Municipal Court in Fullerton, Case No. NG8308239, the applicant was convicted of violating
25 section 4230 (possessing a dangerous drug without a prescription), a misdemeanor. The applicant
26 was sentenced by the Court to serve 24 months probation.

27 15. On or about June 27, 1994, in a criminal proceeding before the Cameron
28 Park Justice Court, Case No. CPARK94, the applicant was convicted of violating Penal Code

1 section 148.9(a) (providing false identification to a Peace Officer), a misdemeanor. The
2 applicant was sentenced to 1 year probation and fined.

3 16. On or about July 29, 1994, in the criminal proceeding entitled *People vs.*
4 *James Edward Gann*, Contra Costa Superior Court Case No. 1596337, the applicant was
5 convicted of the felony violations of Vehicle Code section 20001(b)(2) (hit and run causing
6 permanent injury or death); violation of section 23153(a) and 23153(b) of the Vehicle Code,
7 (driving under the influence of alcohol causing bodily injury); and the violation of Vehicle Code
8 section 23104(b)(reckless driving causing great bodily injury with special prior convictions).
9 The applicant was sentenced to 2 years of prison. On or about May 20, 1997, in State
10 Department of Corrections Case No. J29645, the applicant was found in violation of his parole
11 and ordered to complete his prison term.

12 17. On or about January 22, 1998, in the criminal proceeding *People of the*
13 *State of California vs. James Edward Gann*, Contra Costa Superior Court, Case No. 980115-0,
14 the applicant was charged with two criminal counts and an enhancement based on a prior prison
15 conviction. Count One of the complaint charged the applicant with violating Health and Safety
16 Code section 11550(a) (use and being under the influence of a controlled substance, to wit,
17 Methamphetamine), a felony. Count Two charged the applicant with the violation of section
18 11377(a) (possession of a controlled substance, to wit, Methamphetamine), a misdemeanor. The
19 complaint further charged an enhancement pursuant to Penal Code section 667.5 for his prior
20 prison conviction. On or about December 12, 1999, the applicant was convicted by his plea of
21 guilty to a misdemeanor violation in Count One and the misdemeanor violation in Count Two of
22 the complaint. The applicant was granted 1 year of Court probation and ordered by the Court to
23 serve 365 days, with 127 hours credit, of jail time to be served by electronic home detention.
24 Further, the court ordered the applicant to pay \$295.00 in fees and a restitution fine of \$200.00.
25 On or about April 16, 2004, the Court granted the applicant's motion to dismiss the criminal
26 action as to Counts One and Two of the charging complaint pursuant to Penal Code section
27 1203.4.

28 18. On or about November 19, 2006, the applicant signed his application for

