1 2 3 4 5 6 7 8 9	EDMUND G. BROWN JR., Attorney General of the State of California FRANK H. PACOE, State Bar No. 91740 Supervising Deputy Attorney General 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Telephone: (415) 703-5556 Facsimile: (415) 703-5556 Facsimile: (415) 703-5480 Attorneys for Complainant LYDIA ZANE Senior Legal Analyst BEFORE T BOARD OF PHA DEPARTMENT OF CON STATE OF CAL	ARMACY ISUMER AFFAIRS	
10	In the Matter of the Statement of Issues Against:	Case No. 3190	
11 12	JIM M. GANN 1756 Sattler Dr. Concord, California 94519	STATEMENT OF ISSUES	
13 14	Applicant for Pharmacy Technician Registration		
15	Applicant/Respondent.		
16	Complainant alleges:		
17	PARTIES		
18	1. Virginia Herold (Complainan	t) brings this Statement of Issues solely in	
19	her official capacity as the Executive Officer of the	Board of Pharmacy, Department of	
20	Consumer Affairs.		
21	2. On or about February 24, 200)6, the Board of Pharmacy, Department of	
22	Consumer Affairs received an application for a Pha	rmacy Technician's License from Jim Gann	
23	(Applicant/Respondent, hereafter Applicant). The a	application received by the Board was	
24	unsigned and uncertified by the Applicant. On or a	bout November 19, 2006, Applicant Jim	
25	Gann certified under penalty of perjury to the truthfulness of all statements, answers, and		
26	representations in the application. The Board denied his application on August 8, 2007.		
27	JURISDICTION		
28	3. This Statement of Issues is b	rought before the Board of Pharmacy (Board)	
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\$	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:
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	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
x	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
Ň	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:
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(k) The conviction of more than one misdemeanor or any felony involving the
 use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
 combination of those substances.

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

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

(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
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 1 of a subsequent order under the provisions of Section 1203.4 of the Penal Code. 2 (2) Done any act involving dishonesty, fraud or deceit with the intent to 3 substantially benefit himself or another, or substantially injure another; or 4 (3) Done any act which if done by a licentiate of the business or profession in 5 question, would be grounds for suspension or revocation of license. 6 The Board may deny a license pursuant to this subdivision only if the crime or act 7 is substantially related to the qualifications, functions or duties of the business or profession for 8 9 which application is made. 10 (c) A board may deny a license regulated by this code on the ground that the 11 applicant knowingly made a false statement of fact required to be revealed in the application for 12 such license. 13 Section 493 of the Code states that, notwithstanding any other provision of 7. 14 law, in a proceeding conducted by a board within the department pursuant to law to deny an 15 application for a license or to suspend or revoke a license or otherwise take disciplinary action 16 against a person who holds a license, upon the ground that the applicant or the licensee has been 17 18 convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact 19 that the conviction occurred, but only of that fact, and the board may inquire into the 20 circumstances surrounding the commission of the crime in order to fix the degree of discipline or 21 to determine if the conviction is substantially related to the qualifications, functions, and duties 22 of the licensee in question. 23 As used in this section, "license" includes "certificate," "permit," "authority," and 24 25 "registration." California Code of Regulations, title 16, section 1770, states, that, for the 26 8. purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 27 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be 28

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.

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

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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.

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

FACTUAL BACKGROUND

14. On or about July 6, 1983, in a criminal court proceeding before the
Municipal Court in Fullerton, Case No. NG8308239, the applicant was convicted of violating
section 4230 (possessing a dangerous drug without a prescription), a misdemeanor. The applicant
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

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

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

- On or about January 22, 1998, in the criminal proceeding People of the 12 17. State of California vs. James Edward Gann, Contra Costa Superior Court, Case No. 980115-0, 13 the applicant was charged with two criminal counts and an enhancement based on a prior prison 14 conviction. Count One of the complaint charged the applicant with violating Health and Safety 15 Code section 11550(a) (use and being under the influence of a controlled substance, to wit, 16 Methamphetamine), a felony. Count Two charged the applicant with the violation of section 17 11377(a) (possession of a controlled substance, to wit, Methamphetamine), a misdemeanor. The 18 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 guilty to a misdemeanor violation in Count One and the misdemeanor violation in Count Two of 21 the complaint. The applicant was granted 1 year of Court probation and ordered by the Court to 22serve 365 days, with 127 hours credit, of jail time to be served by electronic home detention. 23 Further, the court ordered the applicant to pay \$295.00 in fees and a restitution fine of \$200.00. 24 On or about April 16, 2004, the Court granted the applicant's motion to dismiss the criminal 25 action as to Counts One and Two of the charging complaint pursuant to Penal Code section 26 27 1203.4.
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18. On or about November 19, 2006, the applicant signed his application for

Registration as a Pharmacy Technician, certifying under penalty of perjury the truth and accuracy 1 of all statements, answers, and representations made in the application including all supplemental 2 statements. The application instructed the applicant to provide a written explanation for all 3 affirmative answers to questions asked on the form and warns that failure to do so may result in 4 the application being deemed incomplete and being withdrawn. Ouestion No. 6 of the 5 application asked if the applicant had ever been convicted or pled no contest to a violation of any 6 law of a foreign country, the United States or any state laws or local ordinances. It stated "You 7 must include all misdemeanor and felony convictions, regardless of the age of the conviction, 8 9 including those which have been set aside under Penal Code section 1203.4." Applicant Jim Gann checked the box for "Yes" in response to Question 6. 19. 10 In his written explanation, the applicant discussed and submitted a one page copy of the Contra 11 Costa County Superior Court clerk's docket and minutes indicating dismissal of Counts One and 12

13 Two in Case No. 980115-0. There was no further specific statement addressing any other

convictions in the applicant's conviction history.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Convictions of Substantially Related Crimes)

20. Applicant Jim Gann's application is subject to denial under section
480(a)(1) and 480(a)(3) of the Code, pursuant to Code sections 493, 4301(1); and/or 4300(c) by
reference to 4301(1) as well as by reference to title 16, California Code of Regulations, section
1770, in that, as set forth in paragraphs 13, 14, 15, and 16, above, the applicant was convicted of
crimes substantially related to the qualifications, functions, or duties of the license sought.

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SECOND CAUSE FOR DENIAL OF APPLICATION

(Convictions of Crimes Involving Dangerous Drugs or Alcohol)

24 21. Applicant Jim Gann's application is subject to denial under Code section
25 480(a)(3) by reference to 493, 4301(k) and/or Code section 4300(c) by reference to 4301(k) in
26 that, as described in paragraphs 13, 15, and 16, above, the applicant was convicted of more than
27 one misdemeanor and felony involving the use or consumption of dangerous drugs or alcoholic
28 beverage or any combination of those substances.

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1	THIRD CAUSE FOR DENIAL OF APPLICATION	
2	(Violations of Laws Regulating Controlled Substances/Dangerous Drugs)	
3	22. Applicant's application is subject to denial under Code section 480(a)(3)	
4	by reference to 4301(j), and/or Code section 4300(c) by reference to 4301(j), in that, as described	
5	in paragraphs 13, 15, and 16, above, the applicant violated the laws regulating controlled	
6	substances and/or dangerous drugs.	
7	FOURTH CAUSE FOR DENIAL OF APPLICATION	
8	(Dishonesty in the Application Documents)	
9	23. Applicant Jim Gann's application is subject to denial under Code sections	
10	480(c); 480(a)(2); 480(a)(3) by reference to Code sections 4301(f) and/or (g); and/or 4300(c) by	
11	reference to 4301(f) and/or (g), in that, as set forth in paragraphs 17 and 18, above, the applicant	
12	was dishonest and/or falsely misrepresented a material fact in his application by failing to	
13	disclose his complete conviction history.	
14	PRAYER	
15	WHEREFORE, Complainant requests that a hearing be held on the matters herein	
16	alleged, and that following the hearing, the Board of Pharmacy issue a decision:	
17	A. Denying the application of Jim Gann for registration as a Pharmacy	
18	Technician;	
19	B. Taking such other and further action as deemed necessary and proper.	
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21	DATED: 10/16/08	
22	VIRGINIA HEROLD	
23	Executive Officer Board of Pharmacy, Department of Consumer Affairs	
24	State of California Complainant	
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