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

12 In the Matter of the Statement of Issues
Against:

Case No. 3466

13
14 MEGHAN HANORA O'BRIEN
940 Fourth Street
15 Norco, CA 92860

STATEMENT OF ISSUES

16 Application No. 085667

17 Respondent.

18
19 Complainant alleges:

20 PARTIES

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

23 2. On or about July 24, 2008, the Board of Pharmacy, Department of Consumer Affairs,
24 received an application for a pharmacy technician license from Meghan Hanora O'Brien
25 (Respondent). On or about July 18, 2008, Respondent Meghan Hanora O'Brien certified under
26 penalty of perjury to the truthfulness of all statements, answers, and representations in the
27 application. The Board denied the application on July 6, 2009.

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JURISDICTION

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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 (Code) unless otherwise indicated.

5 4. Section 475 of the Code states, in pertinent part:

6 “Notwithstanding any other provision of this code, the provisions of this division shall
7 govern the denial of licenses on the grounds of:

8 “(1) Knowingly making a false statement of material fact, or knowingly omitting to state a
9 material fact, in an application for a license.

10 “....

11 “(3) Commission of any act involving dishonesty, fraud or deceit with the intent to
12 substantially benefit himself or another, or substantially injure another.

13 “(4) Commission of any act which, if done by a licentiate of the business or profession in
14 question, would be grounds for suspension or revocation of a license.

15 “(b) Notwithstanding any other provisions of this code, the provisions of this division shall
16 govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2)
17 of subdivision (a).

18 “(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good
19 moral character or any similar ground relating to an applicant’s character, reputation, personality,
20 or habits.”

21 5. Section 480 of the Code states:

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

24 “....

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

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

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

4 “(b) Notwithstanding any other provision of this code, no person shall be denied a license
5 solely on the basis that he or she has been convicted of a felony if he or she has obtained a
6 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
7 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
8 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
9 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
10 Section 482.

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

14 6. Section 482 of the Code states:

15 “Each board under the provisions of this code shall develop criteria to evaluate the
16 rehabilitation of a person when:

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

18 “....

19 “Each board shall take into account all competent evidence of rehabilitation furnished by
20 the applicant or licensee.”

21 7. Section 492 of the Code states:

22 “Notwithstanding any other provision of law, successful completion of any diversion
23 program under the Penal Code, or successful completion of an alcohol and drug problem
24 assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of
25 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
26 (commencing with Section 500) of this code, or any initiative act referred to in that division, from
27 taking disciplinary action against a licensee or from denying a license for professional
28

1 misconduct, notwithstanding that evidence of that misconduct may be recorded in a record
2 pertaining to an arrest.

3 “This section shall not be construed to apply to any drug diversion program operated by any
4 agency established under Division 2 (commencing with Section 500) of this code, or any
5 initiative act referred to in that division.”

6 8. Section 4301 of the Code states:

7 “The board shall take action against any holder of a license who is guilty of unprofessional
8 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
9 Unprofessional conduct shall include, but is not limited to, any of the following:

10 “. . . .

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

13 “. . . .”

14 9. Section 4060 of the Code states:

15 “No person shall possess any controlled substance, except that furnished to a person upon
16 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
17 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
18 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician
19 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
20 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the
21 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
22 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-
23 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled
24 with the name and address of the supplier or producer.

25 “Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
26 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
27 devices.”

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1 10. Health and Safety Code section 11377, subdivision (a) states:
2 “(a) Except as authorized by law and as otherwise provided in subdivision (b) or Section
3 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
4 Business and Professions Code, every person who possesses any controlled substance which is
5 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in
6 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),
7 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)
8 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section
9 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to
10 practice in this state, shall be punished by imprisonment in a county jail for a period of not more
11 than one year or in the state prison.”

12 REGULATIONS

13 11. California Code of Regulations, title 16, section 1769, states:
14 “(a) When considering the denial of a facility or personal license under Section 480 of the
15 Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his
16 present eligibility for licensing or registration, will consider the following criteria:

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

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

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

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

25 “(5) Evidence, if any, of rehabilitation submitted by the applicant.”

26 12. California Code of Regulations, title 16, section 1770, states:

27 “For the purpose of denial, suspension, or revocation of a personal or facility license
28 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a

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

5 STATEMENT OF FACTS

6 13. On or about December 23, 2004, Riverside County Sheriff's deputies, while on patrol
7 in the City of Norco, observed a vehicle make a turn at the intersection of Fourth Street and
8 Temescal with its lights off. The vehicle, with no rear license plate, was stopped by the deputies.
9 The deputies asked the driver of the vehicle to step out and, when she opened the door, they
10 observed numerous pieces of mail in the driver's door panel. The pieces of mail had several
11 different names and when the driver, Jennifer F., was asked if the mail belonged to her, she
12 responded, "Um, no, it's my friend's;" however, Jennifer F. was unable to match any names or
13 addresses. Deputies detained Jennifer F. as they believed the mail was stolen.

14 14. Deputies then made contact with the passenger, Respondent, who was seated in the
15 right front seat. While Respondent was retrieving her driver's license, deputies noticed in the
16 floor board more loose mail with different names, three cell phones, a car stereo amplifier, and a
17 11"x 4" black pouch, which the deputies feared had a weapon. Deputies asked Respondent to
18 step out of the vehicle and she was patted down for weapons and detained in the back seat of the
19 patrol car.

20 15. Deputies believed the mail was stolen, and that the cell phones and night scope might
21 also be stolen, and collected the items and conducted an inventory search prior to having the
22 vehicle towed. Deputies also found a green camouflaged pouch in the center console of the
23 vehicle, which contained a glass pipe. Jennifer F. and Respondent were placed under arrest and
24 transported to the Norco City Hall.

25 16. After Jennifer F. and Respondent were booked, deputies returned to their patrol car,
26 lifted the rear seat and found three credit cards, one receipt, and a crumpled piece of paper
27 containing approximately .5 grams of a white crystal substance. Under the area where
28 Respondent had sat in the patrol car, deputies found a plastic baggie containing about 1.5 grams

1 of a white crystal substance. Under the area where Jennifer F. had sat in the patrol car, deputies
2 found one credit card bearing the name John T., and a Washington Mutual PIN slip bearing the
3 name Andrew H.

4 17. When Respondent was interviewed by deputies, she told them the cell phones and
5 amplifier belonged to her and claimed to have no knowledge of the night scope. When asked
6 about the camouflage pouch and glass pipe, Respondent stated, "Oh, they're mine, and so is the
7 speed you found."

8 18. When Jennifer F. was interviewed by deputies, she told them that she and Respondent
9 were driving around removing mail from residential mailboxes in Riverside, Corona and Norco.
10 Jennifer F. told deputies that a few days earlier, during a mail theft, she obtained the credit card
11 belonging to John T. and said that she and Respondent were using the card for cash withdrawals
12 and "Christmas shopping." Jennifer F. admitted to placing John T.'s credit card under the back
13 seat of the patrol car because she didn't want to get caught with it. Jennifer F. further stated that
14 she and Respondent had possession of the other credit cards, but was unsure if Respondent had
15 activated them.

16 **FIRST CAUSE FOR DENIAL OF APPLICATION**

17 **(Unlawful Possession of Methamphetamine on December 23, 2004)**

18 19. Respondent's application is subject to denial under Code section 480, subdivision
19 (a)(3)(A), in conjunction with Code section 4301, subdivision (j), in that she committed an act
20 that if done by a licentiate (a licensed pharmacy technician) would be grounds for suspension or
21 revocation of the license. Specifically, Respondent, on or about December 23, 2004, unlawfully
22 possessed a controlled substance, methamphetamine, in violation of Code section 4060 and
23 Health and Safety Code section 11377, subdivision (a). The circumstances are as follows:

24 A. On or about January 20, 2005, in a criminal proceeding entitled *People of the State of*
25 *California v. Meghan Hanora O'Brien*, in Riverside County Superior Court, case number
26 121499, Respondent pled guilty to violating Health & Safety Code section 11377, subdivision (a)
27 [possession of a controlled substance], a felony.

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1 B. As a result of the plea, Respondent was ordered to pay various fines and fees, to
2 enroll in the Penal Code section 1000 program (deferred entry of judgment program), and to file
3 proof with the Court of the enrollment by February 28, 2005.

4 C. On July 18, 2005, a bench warrant was issued for Respondent for her failure to file
5 proof of Penal Code section 1000 enrollment.

6 D. On October 14, 2005, diversion was reinstated for 18 months, and Respondent was
7 ordered to file proof of Penal Code section 1000 completion by November 21, 2005.

8 E. On November 21, 2005, a bench warrant was issued for Respondent for her failure to
9 appear to show proof of Penal Code section 1000 completion. Criminal proceedings resumed.

10 F. On November 28, 2005, Respondent filed proof of successful completion of diversion
11 and Count One of the criminal complaint (possession of the controlled substance) was ordered
12 dismissed by the court pursuant to Penal Code section 1000.

13 G. The circumstances that led to the criminal proceeding are alleged in paragraphs 13-18
14 above, which are hereby incorporated by reference.

15 **SECOND CAUSE FOR DENIAL OF APPLICATION**

16 **(Acts Involving Dishonesty, Fraud or Deceit)**

17 20. Respondent's application is subject to denial under Code section 480, subdivision
18 (a)(2), in that she committed acts involving dishonesty, fraud, or deceit, with the intent to
19 substantially benefit herself or another, or substantially injure another, in that Respondent
20 possessed stolen property and fraudulently used an access card (credit card), as alleged in
21 paragraphs 13-18 above, which are hereby incorporated by reference.

22 **THIRD CAUSE FOR DENIAL OF APPLICATION**

23 **(False Statement of Fact in Application For Licensure)**

24 21. Respondent's application is subject to denial under Code section 480, subdivision (c),
25 in that she knowingly made a false statement of fact required to be revealed in her application for
26 licensure. The circumstances are as follows:

27 A. On or about July 24, 2008, the Board of Pharmacy received an application for a
28 pharmacy technician license from Respondent. On or about November 18, 2008, as part of

1 Respondent's application for the license, the Board requested that Respondent submit a written
2 explanation describing the circumstances surrounding her unlawful possession of a controlled
3 substance (see First Cause For Denial of Application above).

4 B. On or about December 14, 2008, Respondent submitted a letter to the Board
5 describing the circumstances surrounding the December 23, 2004, incident. In the letter,
6 Respondent told the Board that on December 23, 2004, she was on a date and was invited to go to
7 a party, and that while driving, the vehicle she was riding in was pulled over by authorities.
8 Respondent told the Board that she did not know the vehicle contained stolen property.
9 Respondent further told the Board that she was wearing the jacket of the person she was on a date
10 with, and that unbeknownst to her, the jacket pocket contained a controlled substance and drug
11 paraphernalia.

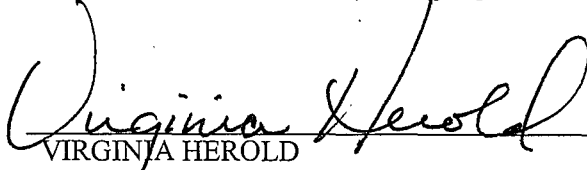
12 C. However, as alleged in paragraphs 13-18 above, which are hereby incorporated by
13 reference, Respondent admitted that the drug paraphernalia (the glass pipe) and the controlled
14 substance ("speed") belonged to her.

15 PRAYER

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

- 18 1. Denying the application of Meghan Hanora O'Brien for a pharmacy technician
19 license;
20 2. Taking such other and further action as deemed necessary and proper.

21
22 DATED: 9/23/10


23 VIRGINIA HEROLD
24 Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 Complainant

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