

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

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

Case No. 4000

13 **JERRELL ANDRE SCOTT**
14 **68790 Panorama Drive**
Desert Hot Springs, CA 92240

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about August 18, 2009, the Board of Pharmacy, Department of Consumer
22 Affairs received an application for a Pharmacy Technician Registration from Jerrell Andre Scott
23 (Respondent). On or about August 13, 2009, Jerrell Andre Scott certified under penalty of
24 perjury to the truthfulness of all statements, answers, and representations in the application. The
25 Board denied the application on October 18, 2010.

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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 (Code) unless otherwise indicated.

5 4. Section 4300, subdivision (c) of the Code states, in pertinent part, that the Board may
6 refuse a license to any applicant guilty of unprofessional conduct.

7 5. Section 475 of the Code states:

8 (a) Notwithstanding any other provisions of this code, the provisions of this
9 division shall govern the denial of licenses on the grounds of:

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

11 (2) Conviction of a crime.

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

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

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16 **STATUTORY PROVISIONS**

17 6. Section 480 states, in pertinent part:

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

20 (1) Been convicted of a crime. A conviction within the meaning of this
21 section means a plea or verdict of guilty or a conviction following a plea of nolo
22 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
23 the provisions of Section 1203.4 of the Penal Code.

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

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

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

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7. Section 482 of the Code states:

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

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

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

8. Section 4301 of the Code states:

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:

.....

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

....

(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. . . .

REGULATORY PROVISIONS

9. California Code of Regulations, title 16, section 1769 states:

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

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

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

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

10 (5) Evidence, if any, of rehabilitation submitted by the applicant.

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

13 For the purpose of denial, suspension, or revocation of a personal or facility
14 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
15 Professions Code, a crime or act shall be considered substantially related to the
16 qualifications, functions or duties of a licensee or registrant if to a substantial degree
17 it evidences present or potential unfitness of a licensee or registrant to perform the
18 functions authorized by his license or registration in a manner consistent with the
19 public health, safety, or welfare.

20 **DRUG**

21 11. Marijuana is a Schedule I controlled substance as designated by Health and Safety
22 Code section 11054, subdivision (d)(13), and is a dangerous drug pursuant to Business &
23 Professions Code section 4022.

24 **FIRST CAUSE FOR DENIAL OF APPLICATION**

25 **(June 8, 2005 Criminal Conviction for Selling Marijuana)**

26 12. Respondent's application for registration as a pharmacy technician is subject to denial
27 under sections 480, subdivision (a)(1) of the Code in that Respondent was convicted of a crime
28 that is substantially related to the qualifications, duties, and functions of a pharmacy technician.

The circumstances are as follows:

a. On or about June 8, 2005, in a criminal proceeding entitled *People of the State of California vs. Jerrell Andre Scott*, in San Bernardino County Superior Court, case number FMB007390, Respondent was convicted on his plea of nolo contendere to violating Health and Safety Code section 11360, selling and/or furnishing marijuana, a felony.

1 b. As a result of the conviction, on or about July 20, 2005, Respondent was
2 sentenced to 120 days in the San Bernardino County Jail, with credit for three days, and he was
3 placed on 36 months supervised probation. Respondent was further ordered to comply with
4 standard felony probation terms, including random controlled substance tests, participation in a
5 counseling program, and submission to a Fourth Amendment waiver. On or about April 27,
6 2009, the court granted Respondent's motion to reduce the felony conviction to a misdemeanor
7 and probation was terminated. The court set aside the conviction and dismissed the case pursuant
8 to Penal Code sections 1203.4 and 1203.4, subdivision (a).

9 c. The circumstances that led to the conviction are that Respondent became a
10 subject of an ongoing investigation conducted by the Naval Criminal Investigative Service
11 (NCIS), which targeted military and civilian personnel who were selling illegal drugs to Navy and
12 Marine Corps personnel at Marine Air Ground Task Force Training Command at Twenty-Nine
13 Palms. Respondent admitted to NCIS agents that he sold marijuana on multiple occasions to a
14 sailor he knew as "Justin." The matter was turned over to the San Bernardino County Sheriff's
15 Department and Respondent was subsequently arrested and prosecuted.

16 **SECOND CAUSE FOR DENIAL OF APPLICATION**

17 **(Commission of Acts Which if Done by a Licensee Would be**
18 **Grounds for Suspension or Revocation of License)**

19 13. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
20 of the Code in that he committed acts, that if done by a licensed pharmacy technician, would be
21 grounds for suspension or revocation of the license. The circumstances are as follows:

22 a. On or about June 8, 2005, as detailed in paragraph 12, above, Respondent was
23 convicted of a crime substantially related to the qualifications, functions, and duties of a licensed
24 pharmacy technician, which is a violation of section 4301, subdivision (I) of the Code for a
25 licensee.

26 b. On or about June 8, 2005, as detailed in paragraph 12, above, Respondent was
27 convicted of violating Health and Safety Code section 11360, a statute regulating controlled

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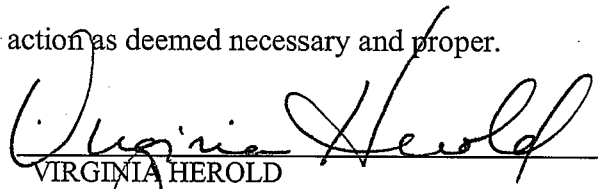
1 substances and dangerous drugs crime, which is a violation of section 4301, subdivision (j) of the
2 Code for a licensee.

3 **PRAYER**

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

- 6 1. Denying the application of Jerrell Andre Scott for a Pharmacy Technician
7 Registration;
8 2. Taking such other and further action as deemed necessary and proper.

9 DATED: 6/22/11



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

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