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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

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

Case No. 4053

12 **CHRISTIAN LEE SPEARS**
200 W. San Bernardino Ave, #102 1/2
13 Rialto, CA 92376
14 **Application for Pharmacy Technician
Registration**

**FIRST AMENDED STATEMENT OF
ISSUES**

15 Respondent.

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20 Complainant alleges:

21 **PARTIES**

22 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
23 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
24 2. On or about August 13, 2010, the Board of Pharmacy, Department of Consumer
25 Affairs received an Application for Pharmacy Technician Registration from Christian Lee Spears
26 (Respondent). On or about August 5, 2010, Christian Lee Spears certified under penalty of
27 perjury to the truthfulness of all statements, answers, and representations in the application. The
28 Board denied the application on March 1, 2011.

1 related to the qualifications, functions, or duties of the business or profession for which the
2 license was issued.

3 7. Section 492 of the Code provides, in pertinent part, that notwithstanding any other
4 provision of law, successful completion of any diversion program under the Penal Code, or
5 successful completion of an alcohol and drug problem assessment program under Article 5
6 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not
7 prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500)
8 of this code, or any initiative act referred to in that division, from taking disciplinary action
9 against a licensee or from denying a license for professional misconduct, notwithstanding that
10 evidence of that misconduct may be recorded in a record pertaining to an arrest...

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

21 As used in this section, "license" includes "certificate," "permit," "authority," and
22 "registration."

23 9. Section 4301 of the Code states:

24 "The board shall take action against any holder of a license who is guilty of unprofessional
25 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:

26 ...

27 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
28 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious
to oneself, to a person holding a license under this chapter, or to any other person or to the

1 public, or to the extent that the use impairs the ability of the person to conduct with safety
2 to the public the practice authorized by the license.

3 ...
4 "(j) The violation of any of the statutes of this state, or any other state, or of the United
5 States regulating controlled substances and dangerous drugs.

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

9 "(l) The conviction of a crime substantially related to the qualifications, functions, and
10 duties of a licensee under this chapter. The record of conviction of a violation of Chapter
11 13 (commencing with Section 801) of Title 21 of the United States Code regulating
12 controlled substances or of a violation of the statutes of this state regulating controlled
13 substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In
14 all other cases, the record of conviction shall be conclusive evidence only of the fact that
15 the conviction occurred. The board may inquire into the circumstances surrounding the
16 commission of the crime, in order to fix the degree of discipline or, in the case of a
17 conviction not involving controlled substances or dangerous drugs, to determine if the
18 conviction is of an offense substantially related to the qualifications, functions, and duties
19 of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea
20 of nolo contendere is deemed to be a conviction within the meaning of this provision...

21 "(p) Actions or conduct that would have warranted denial of a license...

22 REGULATORY PROVISIONS

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

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

29 CONTROLLED SUBSTANCE

30 11. "Methamphetamine," is a Schedule II controlled substance as designated by Health
31 and Safety Code section 11055(d)(2) and is categorized as a dangerous drug pursuant to section
32 4022.

33 FIRST CAUSE FOR DENIAL OF APPLICATION

34 (Criminal Convictions)

35 12. Respondent's application is subject to denial under section 480, subdivision (a)(1),
36 and section 4301(l) of the Code in that Respondent was convicted of crimes as follows:

1 a. On or about June 29, 2005, after pleading *nolo contendere*, Respondent was
2 convicted of one misdemeanor count of violating Penal Code section 243 subdivision (e)(1)
3 [battery to spouse] in the criminal proceeding entitled *The People of the State of California v.*
4 *Christian Lee Spears* (Super. Ct. Shasta County, 2005, No. 05-0004738). The Court sentenced
5 Respondent to serve 3 days in Shasta County Jail and placed him on 36 months probation, with
6 terms and conditions. The circumstances surrounding the conviction are that on or about June 29,
7 2005, Respondent and his wife had an altercation. He pushed her to the ground and she scraped
8 her knee. Respondent was subsequently arrested for violating Penal Code section 273.5,
9 subdivision (a) [corporal injury].

10 b. On or about June 9, 1999, after pleading guilty, Respondent was convicted of one
11 misdemeanor count of violating Vehicle Code section 23103.5 [reckless driving] in the criminal
12 proceeding entitled *The People of the State of California v. Christian Lee Spears* (Super. Ct. San
13 Bernardino County, 1999, No. TSB100939). The Court ordered pronouncement of Judgment
14 withheld and conditional and revocable release granted for a period of 36 months, with terms and
15 conditions. The circumstances surrounding the conviction are that on or about December 19,
16 1998, Respondent drove a vehicle upon a highway in a wanton and reckless manner with willful
17 disregard for the safety of himself and others.

18 **SECOND CAUSE FOR DENIAL OF APPLICATION**

19 **(Acts Warranting Denial of Licensure)**

20 13. Respondent's application is subject to denial under section 4300, subdivision (c),
21 section 4301, subdivisions (p) and (h), and section 480, subdivisions (a)(3)A) and (a)(3)(B) of the
22 Code , in that Respondent committed acts which if done by a licentiate of the business and
23 profession in question, would be grounds for suspension or revocation of his license as follows:

24 a. Respondent was convicted of crimes substantially related to the qualifications,
25 functions, or duties of a pharmacy technician which to a substantial degree evidence his present
26 or potential unfitness to perform the functions authorized by his license in a manner consistent
27 with the public health, safety, or welfare, in violation of sections 4031, subdivision (l), and 490,
28 in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,

1 and by this reference incorporates, the allegations set forth above in paragraph 12, subparagraphs
2 (a) and (b), inclusive, as though set forth fully.

3 b. On or about, November 19, 2007 during an investigation by the San Bernardino
4 Sheriff's Department of an attempted suicide, Respondent admitted to leaving a note and taking a
5 bottle of rat poison from his family's home. When asked if he had anything illegal in the shorts,
6 Respondent admitted "I have a little bit of drugs." During a search of Respondent's shorts, the
7 officer found a short cut straw and a plastic baggie with a crystal-like substance resembling
8 Methamphetamine. Respondent admitted to the officer "[t]hat is a little bit of meth, sir." He was
9 subsequently transported to the Behavioral Health Unit at Arrowhead Medical Center for medical
10 attention and found to be in violation of Health and Safety Code section 11377, subdivision (a)
11 [possession of a controlled substance].

12 c. Respondent was found to be in possession of a controlled substance, to wit:
13 Methamphetamine, in violation of section 4301, subdivisions (j) and (o). Complainant refers to,
14 and by this reference incorporates, the allegations set forth above in paragraph 13, subparagraph
15 (b), as though set forth fully.

16 d. On or about September 27, 2010, in response to the Board of Pharmacy's request to
17 provide additional information in support of respondent's Application for Registration as a
18 Pharmacy Technician, Respondent admitted "[I] was heavily into drugs" in 2005. Further,
19 Respondent admitted that when he was investigated on or about November 19, 2007, he was "still
20 on drugs".

21 **THIRD CAUSE FOR DENIAL OF APPLICATION**

22 **(Unprofessional Conduct-Use of a Dangerous Drug)**

23 14. Respondent's application is subject to denial under section 480(a)(3) and 4301 (h) of
24 the Code in that on November 19, 2007 and July 25, 2005, Respondent was under the influence of
25 methamphetamine, a dangerous drug, to the extent or in a manner as to be dangerous or injurious
26 to himself or to the public. Complainant refers to, and by this reference incorporates, the
27 allegations set forth above in paragraph 13, subparagraphs (b) through (d), inclusive, as though
28 set forth fully. Methamphetamine is Scheduled II Stimulant (Health & Safety Code

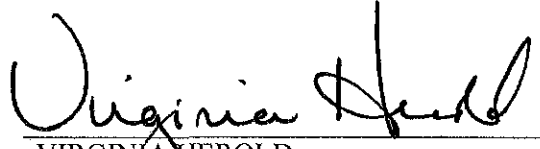
1 §11055(a)(2), so classified because of its high potential for abuse. Respondent was subsequently
2 transported to the Behavioral Health Unit at Arrowhead Medical Center for medical attention and
3 found to be in violation of Health and Safety Code section 11377, subdivision (a) [possession of a
4 controlled substance].

5 P R A Y E R

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

- 8 1. Denying the application of Christian Lee Spears for an Application for Pharmacy
9 Technician Registration;
10 2. Taking such other and further action as deemed necessary and proper.

11
12
13 DATED: 12/20/12


14 VIRGINIA HEROLD
15 Executive Officer
16 Board of Pharmacy
17 Department of Consumer Affairs
18 State of California
19 Complainant

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9 **STATE OF CALIFORNIA**

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12 **CHRISTIAN LEE SPEARS**
13 **200 W. San Bernardino Ave, #102 1/2**
Rialto, CA 92376
14 **Applicant for Pharmacy Technician**
Registration

STATEMENT OF ISSUES

15 Respondent.
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19

20 Complainant alleges:

21 **PARTIES**

22 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
23 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
24 2. On or about August 13, 2010, the Board of Pharmacy, Department of Consumer
25 Affairs received an application for an Applicant for Pharmacy Technician Registration from
26 Christian Lee Spears (Respondent). On or about August 5, 2010, Christian Lee Spears certified
27 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
28 application. The Board denied the application on March 1, 2011.

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 unless otherwise indicated.

5 STATUTORY PROVISIONS

6 4. Section 475 of the Code states:

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

9 "(1) Knowingly making a false statement of material fact, or knowingly
10 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
15 profession in question, would be grounds for suspension or revocation of
16 license.

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

20 "(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good
21 moral character or any similar ground relating to an applicant's character, reputation,
22 personality, or habits."

23 5. Section 480 states, in pertinent part:

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

26 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
27 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any
28 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 of the Penal Code.

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

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

34 6. Section 490 of the Code provides, in pertinent part, that a board may suspend or
35 revoke a license on the ground that the licensee has been convicted of a crime substantially

1 related to the qualifications, functions, or duties of the business or profession for which the
2 license was issued.

3 7. Section 492 of the Code provides, in pertinent part, that notwithstanding any other
4 provision of law, successful completion of any diversion program under the Penal Code, or
5 successful completion of an alcohol and drug problem assessment program under Article 5
6 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not
7 prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500)
8 of this code, or any initiative act referred to in that division, from taking disciplinary action
9 against a licensee or from denying a license for professional misconduct, notwithstanding that
10 evidence of that misconduct may be recorded in a record pertaining to an arrest...

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

21 As used in this section, "license" includes "certificate," "permit," "authority," and
22 "registration."

23 9. Section 4301 of the Code states:

24 "The board shall take action against any holder of a license who is guilty of unprofessional
25 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:

26 ...
27 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
28 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious
to oneself, to a person holding a license under this chapter, or to any other person or to the

1 public, or to the extent that the use impairs the ability of the person to conduct with safety
to the public the practice authorized by the license.

2 ...
3 "(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.

4 "(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
5 combination of those substances.

6 "(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
7 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
8 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
9 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
10 conviction not involving controlled substances or dangerous drugs, to determine if the
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11 of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea
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12 "(p) Actions or conduct that would have warranted denial of a license...

13 REGULATORY PROVISIONS

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

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

21 CONTROLLED SUBSTANCE

22 11. "Methamphetamine," is a Schedule II controlled substance as designated by Health
23 and Safety Code section 11055(d)(2) and is categorized as a dangerous drug pursuant to section
24 4022.

25 FIRST CAUSE FOR DENIAL OF APPLICATION

26 (Criminal Convictions)

27 12. Respondent's application is subject to denial under section 480, subdivision (a)(1),
28 and section 4301(l) of the Code in that Respondent was convicted of crimes as follows:

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2 convicted of one misdemeanor count of violating Penal Code section 243 subdivision (e)(1)
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4 *Christian Lee Spears* (Super. Ct. Shasta County, 2005, No. 05-0004738). The Court sentenced
5 Respondent to serve 3 days in Shasta County Jail and placed him on 36 months probation, with
6 terms and conditions. The circumstances surrounding the conviction are that on or about June 29,
7 2005, Respondent and his wife had an altercation. He pushed her to the ground and she scraped
8 her knee. Respondent was subsequently arrested for violating Penal Code section 273.5,
9 subdivision (a) [corporal injury].

10 b. On or about June 9, 1999, after pleading guilty, Respondent was convicted of one
11 misdemeanor count of violating Vehicle Code section 23103.5 [reckless driving] in the criminal
12 proceeding entitled *The People of the State of California v. Christian Lee Spears* (Super. Ct. San
13 Bernardino County, 1999, No. TSB100939). The Court ordered pronouncement of Judgment
14 withheld and conditional and revocable release granted for a period of 36 months, with terms and
15 conditions. The circumstances surrounding the conviction are that on or about December 19,
16 1998, Respondent drove a vehicle upon a highway in a wanton and reckless manner with willful
17 disregard for the safety of himself and others.

18 **SECOND CAUSE FOR DENIAL OF APPLICATION**

19 **(Acts Warranting Denial of Licensure)**

20 13. Respondent's application is subject to denial under section 4300, subdivision (c),
21 section 4301, subdivisions (p) and (h), and section 480, subdivisions (a)(3)A) and (a)(3)(B) of the
22 Code , in that Respondent committed acts which if done by a licentiate of the business and
23 profession in question, would be grounds for suspension or revocation of his license as follows:

24 a. Respondent was convicted of crimes substantially related to the qualifications,
25 functions, or duties of a pharmacy technician which to a substantial degree evidence his present
26 or potential unfitness to perform the functions authorized by his license in a manner consistent
27 with the public health, safety, or welfare, in violation of sections 4031, subdivision (l), and 490,
28 in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,

1 and by this reference incorporates, the allegations set forth above in paragraph 12, subparagraphs
2 (a) and (b), inclusive, as though set forth fully.

3 b. On or about, November 19, 2007 during an investigation by the San Bernardino
4 Sheriff's Department of an attempted suicide, Respondent admitted to leaving a note and taking a
5 bottle of rat poison from his family's home. When asked if he had anything illegal in the shorts,
6 Respondent admitted "I have a little bit of drugs." During a search of Respondent's shorts, the
7 officer found a short cut straw and a plastic baggie with a crystal-like substance resembling
8 Methamphetamine. Respondent admitted to the officer "[t]hat is a little bit of meth, sir." He was
9 subsequently transported to the Behavioral Health Unit at Arrowhead Medical Center for medical
10 attention and found to be in violation of Health and Safety Code section 11377, subdivision (a)
11 [possession of a controlled substance].

12 c. Respondent was found to be in possession of a controlled substance, to wit:
13 Methamphetamine, in violation of section 4301, subdivisions (j) and (o). Complainant refers to,
14 and by this reference incorporates, the allegations set forth above in paragraph 13, subparagraph
15 (b), as though set forth fully.

16 d. On or about September 27, 2010, in response to the Board of Pharmacy's request to
17 provide additional information in support of respondent's Application for Registration as a
18 Pharmacy Technician, Respondent admitted "[I] was heavily into drugs" in 2005. Further,
19 Respondent admitted that when he was investigated on or about November 19, 2007, he was "still
20 on drugs".

21 **THIRD CAUSE FOR DENIAL OF APPLICATION**

22 **(Unprofessional Conduct-Use of a Dangerous Drug)**

23 14. Respondent's application is subject to denial under section 480(a)(3) and 4301 (h) of
24 the Code in that on November 19, 2007 and July 25, 2005, Respondent was under the influence of
25 methamphetamine, a dangerous drug, to the extent or in a manner as to be dangerous or injurious
26 to himself or to the public. Complainant refers to, and by this reference incorporates, the
27 allegations set forth above in paragraph 13, subparagraphs (b) through (d), inclusive, as though
28 set forth fully. Methamphetamine is Scheduled II Stimulant (Health & Safety Code

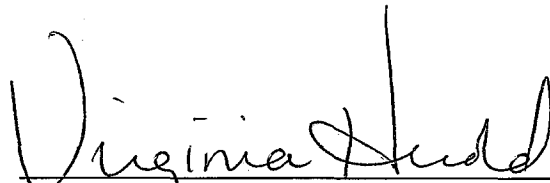
1 §11055(a)(2), so classified because of its high potential for abuse. Respondent was subsequently
2 transported to the Behavioral Health Unit at Arrowhead Medical Center for medical attention and
3 found to be in violation of Health and Safety Code section 11377, subdivision (a) [possession of a
4 controlled substance].

5 PRAYER

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

- 8 1. Denying the application of Christian Lee Spears for a Applicant for Pharmacy
9 Technician Registration;
10 2. Taking such other and further action as deemed necessary and proper.

11
12
13 DATED: 5/29/12



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

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