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

11 In the Matter of the Statement of Issues
Against:

Case No. 4180

STATEMENT OF ISSUES

12 **JENNIFER LYNN MAES**

13 9609 Ravenrock Drive
14 Bakersfield, CA 93312

15 Pharmacy Technician License Application

16 Respondent.

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 (Board).

22 2. On or about February 8, 2010, the Board received an application for a Pharmacy
23 Technician License Application from Jennifer Lynn Maes (Respondent). On or about January 15,
24 2010, Jennifer Lynn Maes certified under penalty of perjury to the truthfulness of all statements,
25 answers, and representations in the application. The Board denied the application on June 27,
26 2011.

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JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 480 states, in pertinent part:

"(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 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.

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

"(3)

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

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

....

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

5. Section 490 provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued

1 6. Section 4300, subdivision (c), states, in pertinent part, that "[t]he board may refuse a
2 license to any applicant guilty of unprofessional conduct. . . ."

3 7. Section 4301 states, in pertinent part:

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

7

8 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
9 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
10 whether the act is a felony or misdemeanor or not.

11

12 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
13 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
14 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
15 to the extent that the use impairs the ability of the person to conduct with safety to the public the
16 practice authorized by the license.

17

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

1 of this provision. The board may take action when the time for appeal has elapsed, or the
2 judgment of conviction has been affirmed on appeal or when an order granting probation is made
3 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
4 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
5 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
6 indictment. . . ."

7 **REGULATORY PROVISION**

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

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

15 **CONTROLLED SUBSTANCES**

16 9. Methamphetamine is a Schedule II controlled substance as designated by Health and
17 Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to
18 Business and Professions Code section 4022.

19 **FIRST CAUSE FOR DENIAL OF APPLICATION**

20 **(Convictions of Substantially Related Crimes)**

21 10. Respondent's application is subject to denial under sections 480, subdivisions (a)(1),
22 in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was
23 convicted of crimes substantially related to the qualifications, functions or duties of a registered
24 pharmacy technician, as follows:

25 a. On or about January 5, 2007, after pleading nolo contendere, Respondent was
26 convicted of two (2) misdemeanor counts, Count 1, violating Vehicle Code section 14601.1(a)
27 [driving when privilege suspended or revoked], and interlineated Count 4, violating Vehicle Code
28 section 12500(a) [driving without a valid license] in the criminal proceeding entitled *The People*

1 of the State of California v. Jennifer Lynn Maes (Super. Ct. Los Angeles County, 2006, No.
2 6BF05961). The Court sentenced Respondent to ten (10) days jail, and placed her on 36 months
3 probation. The circumstances underlying the conviction occurred on or about November 1, 2006,
4 when Respondent drove a vehicle when she did not have a valid driver's license.

5 b. On or about January 30, 2006, after pleading nolo contendere, Respondent was
6 convicted of one misdemeanor count of violating Penal Code section 484(a) [petty theft] in the
7 criminal proceeding entitled *The People of the State of California v. Jennifer Lynn Maes* (Super.
8 Ct. Los Angeles County, 2006, No. 6LG00254). The Court sentenced Respondent to ten (10)
9 days jail, placed her on three (3) years probation, and ordered Respondent to stay away from
10 Nordstrom Rack located in Long Beach, California. The circumstances underlying the conviction
11 are that on or about November 28, 2005, Respondent stole \$161.23 worth of merchandise from
12 Nordstrom Rack located in Long Beach, California.

13 c. On or about April 6, 2004, after pleading guilty, Respondent was convicted of two (2)
14 misdemeanor counts, Count 1, violating Penal Code section 470(d) [false
15 check/record/certification/etc.] and Count 9, violating Penal Code section 459 [burglary] in the
16 criminal proceeding entitled *The People of the State of California v. Jennifer Lynn Maes* (Super.
17 Ct. Orange County, 2003, No. 03NM13571). The Court sentenced Respondent to 75 days jail,
18 placed Respondent on three (3) years probation, and ordered Respondent to stay away from La
19 Rioja Market and A-1 Food Mart both located in Anaheim, CA. The circumstances underlying
20 the conviction are that on or about October 22, 2003, Respondent attempted to cash a forged
21 check in the amount of \$367.59 at La Rioja Market located in Anaheim, California. In addition
22 on or about September 28, 2003, Respondent entered A-1 Food Mart with the intent to commit a
23 theft, specifically, cashing a forged check.

24 d. On or about April 6, 2004, after pleading guilty, Respondent was convicted of one
25 misdemeanor count of violating Penal Code section 459-460(b) [burglary, second degree,
26 commercial structure] in the criminal proceeding entitled *The People of the State of California v.*
27 *Jennifer Lynn Maes* (Super. Ct. Orange County, 2003, No. 03NM13115). The Court sentenced
28 Respondent to 30 days in jail, placed her on three (3) year probation, and ordered her to stay away

1 from Kohl's Department Store. The circumstances underlying the conviction are that on or about
2 September 10, 2003, Respondent admittedly committed commercial burglary.

3 e. On or about October 2, 2003, after pleading guilty, Respondent was convicted of one
4 misdemeanor count of violating Penal Code section 484(a) – 488 [petty theft] in the criminal
5 proceeding entitled *The People of the State of California v. Jennifer Lynn Maes* (Super. Ct.
6 Orange County, 2003, No. 03WM07983). The Court sentenced Respondent to five (5) days jail,
7 placed her on three (3) years probation, and ordered her to stay away from Mervyn's located in
8 Cypress, California. The circumstances underlying the conviction are that on or about August 22,
9 2003, in concert with another, Respondent stole \$292.98 worth of merchandise from Mervyn's
10 located in Cypress, California.

11 f. On or about June 27, 2003, after pleading guilty, Respondent was convicted of six (6)
12 misdemeanor counts, Count 1, violating Penal Code section 12020(a)(4) [carrying a dirk or
13 dagger], Count 2, violating Penal Code section 496(a) [receiving stolen property, to wit, checks,
14 credit cards, mail], Count 3, violating Penal Code section 470(a) [forgery of a document, to wit, a
15 Department of Motor Vehicles ID card], Count 4, violating Penal Code section 470(b)
16 [possession of forged driver's license], Count 5, violating Business and Professions Code section
17 25662(a) [possession of alcoholic beverage by minor], and Count 6, violating Penal Code section
18 470(b) [possession of forged driver's license] in the criminal proceeding entitled *The People of*
19 *the State of California v. Jennifer Lynn Maes* (Super. Ct. Orange County, 2003, No.
20 03WM04388). The Court sentenced Respondent six (6) days jail, placed her on three (3) years
21 probation, and ordered her to complete 39 days Cal Trans duty. The circumstances underlying
22 the conviction are that on or about February 28, 2003, Respondent was in possession of two beer
23 cans in her purse, a large knife concealed in her purse, and two (2) identifications with two
24 different names and addresses containing her photo.

25 **SECOND CAUSE FOR DENIAL OF APPLICATION**

26 **(Dangerous Use of a Controlled Substance)**

27 11. Respondent's application is subject to denial under section 480, subdivision (a)(3) in
28 conjunction with 4301, subdivisions (f) and (h), in that Respondent used a controlled substance in

1 a manner that was dangerous to herself and others. Respondent violated Health and Safety Code
2 section 11550, subdivision (a), in the criminal proceeding entitled *The People of the State of*
3 *California v. Jennifer Lynn Maes* (Super. Ct. Orange County, 2003, No. 03NM02614). On or
4 about January 16, 2003, officers of the Buena Park Police Department arrested Respondent after
5 observing methamphetamine and paraphernalia in Respondent's possession, and based on
6 Respondent's displaying objective signs of being under the influence, and Respondent's
7 admission that she had smoked methamphetamine earlier that evening.¹

8 **THIRD CAUSE FOR DENIAL OF APPLICATION**

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

10 12. Respondent's application is subject to denial under section 480, (a)(2), in that
11 Respondent committed acts involving dishonesty, fraud, or deceit with the intent to substantially
12 benefit herself and / or substantially injure another. Complainant refers to and by this reference
13 incorporates the allegations set forth above in paragraph 10, subparagraphs a – f, inclusive, and
14 paragraph 11, as though set forth fully.

15 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

16 **(Conduct Warranting Licensee Discipline)**

17 13. Respondent's application is subject to denial under section 480, subdivisions
18 (a)(3)(A)(B), in conjunction with California Code of Regulations, title 16, section 1770, in that
19 Respondent committed acts which if done by a licensee would be grounds for discipline.
20 Respondent violated sections, as follows:

21 a. Sections 490, 4300 and 4301, subdivision (l), on the grounds of unprofessional
22 conduct, in that Respondent sustained criminal convictions. Complainant refers to and by this
23 reference incorporates the allegations set forth above in paragraph 10, subparagraphs a - f,
24 inclusive, as though set forth fully.

25
26 ¹ Due to Respondent's successful completion of a Deferred Entry of Judgment program,
27 her arrest did not result in a conviction. However, section 492 authorizes agencies established
28 under Division 2 [section 500 et seq.] [healing arts agencies] to use the underlying behavior,
including behavior documented in an arrest report, in disciplinary actions and denials of licenses.

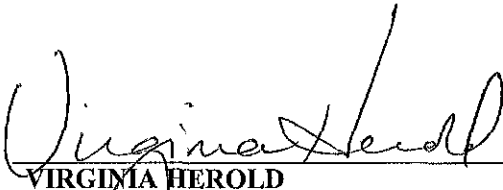
1 b. Sections 4300 and 4301, subdivision (f), on the grounds of unprofessional conduct, in
2 that Respondent committed acts involving moral turpitude, dishonest, fraud, deceit , or
3 corruption. Complainant refers to and by this reference incorporates the allegations set forth
4 above in paragraphs 10 and 11, inclusive, as though set forth fully.

5 **PRAYER**

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

- 8 1. Denying Jennifer Lynn Maes' Pharmacy Technician License Application; and
9 2. Taking such other and further action as deemed necessary and proper.

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11
12
13 DATED: 11/8/12


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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