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

11 In the Matter of the Statement of Issues Against:

Case No. 4181

12 **KURTIS QUENTIN MITCHELL**
13 **59 Rue Chateau**
14 **Aliso Viejo, CA 92656**

STATEMENT OF ISSUES

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about December 14, 2010, the Board of Pharmacy, Department of Consumer
21 Affairs received an application for a Pharmacy Technician Registration from Kurtis Quentin
22 Mitchell (Respondent). On or about December 4, 2010, Kurtis Quentin Mitchell certified under
23 penalty of perjury to the truthfulness of all statements, answers, and representations in the
24 application. The Board denied the application on August 5, 2011.

25 **JURISDICTION**

26 3. This Statement of Issues is brought before the Board of Pharmacy (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code (Code) unless otherwise indicated.

1 4. Section 4300, subdivision (c) of the Code states "The board may refuse a license to
 2 any applicant guilty of unprofessional conduct."

3 **STATUTORY PROVISIONS**

4 5. Section 475 of the Code states:

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

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

9 (2) Conviction of a crime.

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

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

14

15 6. Section 480 of the Code states:

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

18 (1) Been convicted of a crime. A conviction within the meaning of this section
 19 means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
 20 Any action that a board is permitted to take following the establishment of a
 21 conviction may be taken when the time for appeal has elapsed, or the judgment of
 22 conviction has been affirmed on appeal, or when an order granting probation is made
 23 suspending the imposition of sentence, irrespective of a subsequent order under the
 24 provisions of Section 1203.4 of the Penal Code.

25 (2) Done any act involving dishonesty, fraud, or deceit with the intent to
 26 substantially 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
 28 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.

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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 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been 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 that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

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

9. Section 4022 of the Code states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

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1 10. Section 4301 of the Code states:

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

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

9 (g) Knowingly making or signing any certificate or other document that falsely
10 represents the existence or nonexistence of a state of facts.

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

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1 **REGULATORY PROVISIONS**

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

3 (a) When considering the denial of a facility or personal license under Section
4 480 of the Business and Professions Code, the board, in evaluating the rehabilitation
5 of the applicant and his present eligibility for licensing or registration, will consider
6 the following criteria:

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

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

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

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

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

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

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

26 **DRUGS**

27 13. "Oxycontin" is a brand name for oxycodone, a Schedule II controlled substance pursuant to
28 Health and Safety Code section 11055, subdivision (b)(1)(M), and a dangerous drug pursuant to Business
and Professions Code section 4022.

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1 FIRST CAUSE FOR DENIAL OF APPLICATION

2 **(October 4, 2010 Criminal Conviction for Possession of Marijuana on October 26, 2008)**

3 14. Respondent's application for registration as a pharmacy technician is subject to denial
4 under section 480, subdivision (a)(1) and 4301(l) of the Code in that Respondent was convicted
5 of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy
6 technician. The circumstances are as follows:

7 15. On or about October 4, 2010, in a criminal proceeding entitled *State of California v.*
8 *Kurtis Quentin Mitchell*, in the Orange County Superior Court, Case Number SH773361,
9 Respondent was convicted on his plea of guilty to violating Health and Safety Code section
10 11357(b) (possession of marijuana, less than 1 oz.), a misdemeanor.

11 16. As a result of the conviction, the Court ordered that Respondent pay various fines and
12 fees.

13 17. The facts and circumstances that led to the conviction are that on or about October 26,
14 2008, at approximately 0313 hours, Newport Beach Police officers, working uniform patrol,
15 observed a vehicle, California license plate #6AXG540, with an expired registration. Officers
16 initiated a traffic stop of the vehicle and made contact with the driver, later identified as
17 Respondent. Officers could smell a strong odor of burnt marijuana emanating from within the
18 vehicle. Officers asked Respondent if there was anything illegal inside the vehicle, and
19 Respondent hesitantly stated, "No." Respondent appeared to be excessively nervous and began to
20 sweat profusely from his forehead. Officers asked Respondent if there was any marijuana inside
21 the vehicle and Respondent responded, "No." Officers asked the passenger of the vehicle,
22 identified as SAS, if there was anything illegal inside the vehicle and SAS replied, "No."
23 Officers received a verbal consent from both Respondent and SAS to conduct a consensual search
24 of the vehicle and their individual persons.

25 18. Officers asked Respondent to exit the vehicle and he complied. Officers asked
26 Respondent if there was anything illegal inside his pockets, and Respondent replied, "Yes."
27 Respondent told officers that in his front pocket he had an illegal Oxycontin pill. Officers asked
28 Respondent if he possessed a valid prescription for Oxycontin and he replied, "No." Officers

1 asked Respondent how many pills he possessed, and he stated, "One." When officers searched
2 Respondent's person, they located in Respondent's front left pocket a small plastic medication
3 bottle with the label ripped off. Inside the bottle officers located a round green pill, later
4 identified as an 80mg. tablet of Oxycontin, a schedule II narcotic analgesic. A search of
5 Respondent's vehicle revealed a multicolored glass pipe, commonly used for smoking marijuana,
6 with burnt marijuana residue inside the bowl end.

7 19. Officers asked Respondent where he purchased the Oxycontin pill and he told officers
8 that he purchased the Oxycontin pill for \$50 from a friend named "Cameron" who lives in Aliso
9 Viejo. Respondent told officers he had used Oxycontin several times in the past and that it was
10 the most powerful medication he had ever taken. Respondent stated, "It is like Vicodin, but ten
11 times stronger." Respondent told officers that he was aware that the mere possession of
12 Oxycontin without a prescription was a criminal violation. Respondent was placed under arrest
13 for violating Health and Safety Code section 11350(a) (possession of a controlled substance).
14 Respondent's vehicle was towed from the scene.

15 **SECOND CAUSE FOR DENIAL OF APPLICATION**

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

17 20. Respondent's application is subject to denial under sections 480, subdivision (a)(2)
18 and (c) and 4301(f) and (g), of the Code in that he committed an act of dishonesty, fraud and/or
19 deceit when, in response to the question on his application for registration as a pharmacy
20 technician, "Have you ever been convicted of or pled no contest to a violation of any law of a
21 foreign country, the United States or any state laws or local ordinances? You must include all
22 misdemeanor and felony convictions, regardless of the age of the conviction, including those
23 which have been set aside under Penal Code section 1203.4. Traffic violations of \$500 or less
24 need not be reported. If "yes," attach an explanation including the type of violation, the date,
25 circumstances, location and the complete penalty received. In addition to this written
26 explanation, please provide the Board of Pharmacy with certified copies of all pertinent court
27 documents or arrest reports relating to this conviction." Respondent responded, "No," and failed
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1 to disclosed the conviction for possession of marijuana, detailed at paragraph 15, above, which is
2 incorporated here by reference.

3 **THIRD CAUSE FOR DENIAL OF APPLICATION**

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

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

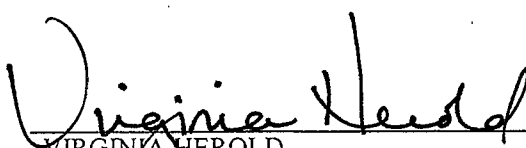
9 22. On or about October 26, 2008, as detailed in paragraphs 14 through 19, above,
10 Respondent was convicted of crimes substantially related to the qualifications, functions, and
11 duties of a licensed pharmacy technician, which would be grounds for discipline under section
12 4301, subdivision (l) of the Code.

13 **PRAYER**

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

- 16 1. Denying the application of Kurtis Quentin Mitchell for a Pharmacy Technician
17 Registration;
18 2. Taking such other and further action as deemed necessary and proper.

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20
21 DATED: 3/1/12


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

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