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

12 In the Matter of the Statement of Issues Against:  
13 **RICHARD DAVID FREITAS**  
14 **Pharmacy Technician Registration Applicant**  
15 **Respondent.**

Case No. 4287

**STATEMENT OF ISSUES**

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 August 9, 2011, the Board of Pharmacy, Department of Consumer  
21 Affairs received an application for a Pharmacy Technician Registration from Richard David  
22 Freitas (Respondent). On or about August 4, 2011, Richard David Freitas certified under penalty  
23 of perjury to the truthfulness of all statements, answers, and representations in the application.  
24 The Board denied the application on January 23, 2012.

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:

2 The board may refuse a license to 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  
6 of this division shall govern the denial of licenses on the grounds of:

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

(2) Conviction of a crime.

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

(4) Commission of any act which, if done by a licentiate of the  
12 business or profession in question, would be grounds for suspension or revocation  
13 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  
17 that the applicant has one of the following:

18 (1) Been convicted of a crime. A conviction within the meaning of  
19 this section means a plea or verdict of guilty or a conviction following a plea of  
20 *nolo contendere*. Any action that a board is permitted to take following the  
21 establishment of a conviction may be taken when the time for appeal has elapsed,  
22 or the judgment of conviction has been affirmed on appeal, or when an order  
23 granting probation is made suspending the imposition of sentence, irrespective of  
24 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  
25 intent to substantially benefit himself or herself or another, or substantially injure  
26 another.

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

(B) The board may deny a license pursuant to this subdivision  
28 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.

. . . .

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.

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

3           8.     Section 493 of the Code states:

4           Notwithstanding any other provision of law, in a proceeding conducted by  
5 a board within the department pursuant to law to deny an application for a license  
6 or to suspend or revoke a license or otherwise take disciplinary action against a  
7 person who holds a license, upon the ground that the applicant or the licensee has  
8 been convicted of a crime substantially related to the qualifications, functions, and  
9 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.

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

11           9.     Section 4301 of the Code states:

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

15           ....

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

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

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

22           ....

23           (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.

24           ....

25           (l) The conviction of a crime substantially related to the qualifications,  
26 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  
27 States Code regulating controlled substances or of a violation of the statutes of  
this state regulating controlled substances or dangerous drugs shall be conclusive  
28 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

1 involving controlled substances or dangerous drugs, to determine if the conviction  
2 is of an offense substantially related to the qualifications, functions, and duties of  
3 a licensee under this chapter. A plea or verdict of guilty or a conviction following  
4 a plea of *nolo contendere* is deemed to be a conviction within the meaning of this  
5 provision. The board may take action when the time for appeal has elapsed, or the  
6 judgment of conviction has been affirmed on appeal or when an order granting  
7 probation is made suspending the imposition of sentence, irrespective of a  
8 subsequent order under section 1203.4 of the Penal Code allowing the person to  
9 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside  
10 the verdict of guilty, or dismissing the accusation, information, or indictment.

11 .....

## 12 REGULATORY PROVISIONS

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

14 (a) When considering the denial of a facility or personal license under  
15 section 480 of the Business and Professions Code, the board, in evaluating the  
16 rehabilitation of the applicant and his present eligibility for licensing or  
17 registration, will consider the following criteria:

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

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

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

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

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

.....

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

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

### 18 FIRST CAUSE FOR DENIAL OF APPLICATION

19 (January 27, 1986 Criminal Conviction for Petty Theft)

20 12. Respondent's application for registration as a pharmacy technician is subject to  
21 denial under Code section 480, subdivisions (a)(1) and (a)(3)(A) in that he was convicted of a

1 crime that is substantially related to the qualifications, duties, and functions of a pharmacy  
2 technician, which would also be a ground for discipline for a licensed pharmacy technician under  
3 Code section 4301, subdivision (l). The circumstances are as follows:

4 a. On or about January 27, 1986, in a criminal proceeding entitled *The*  
5 *People of the State of California vs. Richard David Freitas*, in Orange County Superior Court  
6 North Justice Center, Case Number NM8600764, Respondent was convicted for violating Penal  
7 Code (PC) section 488, petty theft, a misdemeanor.

8 b. As a result of the conviction, on or about January 27, 1986, Respondent  
9 was sentenced to three years informal probation and ordered to pay a fine.

10 c. The facts that led to the conviction are that Respondent tried to steal an  
11 electric razor from Sears.

12 **SECOND CAUSE FOR DENIAL OF APPLICATION**

13 **(March 18, 1986 Criminal Conviction for Cruelty to Another's Animal)**

14 13. Respondent's application for registration as a pharmacy technician is subject to  
15 denial under Code section 480, subdivisions (a)(1) and (a)(3)(A) in that he was convicted of a  
16 crime that is substantially related to the qualifications, duties, and functions of a pharmacy  
17 technician, which would also be a ground for discipline for a licensed pharmacy technician under  
18 Code section 4301, subdivision (l). The circumstances are as follows:

19 a. On or about March 18, 1986, in a criminal proceeding entitled *The People*  
20 *of the State of California vs. Richard David Freitas*, in Orange County Superior Court North  
21 Justice Center, Case Number NM8603342, Respondent was convicted for violating PC section  
22 597 subdivision (a), cruelty to another's animal, a misdemeanor.

23 b. As a result of the conviction, on or about March 18, 1986, Respondent was  
24 sentenced to three years probation and ordered to serve 60 days in the Orange County Jail.

25 c. The facts that led to the conviction are that Respondent shot a neighbor's  
26 dog with an air rifle. Another neighbor saw Respondent shoot the dog and heard the dog yelp.  
27 The eye witness reported the incident to the police.

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1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 **(July 31, 1987 Criminal Conviction for Petty Theft)**

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

8 a. On or about July 31, 1987, in a criminal proceeding entitled *The People of*  
9 *the State of California vs. Richard David Freitas*, in Orange County Superior Court Central  
10 Justice Center, Case Number NM8710213, Respondent was convicted for violating PC section  
11 488, petty theft, a misdemeanor.

12 b. As a result of the conviction, on or about July 31, 1987, Respondent was  
13 sentenced to informal probation and ordered to serve 20 days in the Orange County Jail and pay  
14 a fine.

15 c. The facts that led to the conviction are that Respondent stole automobile  
16 parts for his vehicle.

17 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

18 **(Nov. 12, 1991 Conviction for Disorderly Conduct–Soliciting a Prostitute on Sep. 12, 1991)**

19 15. Respondent's application for registration as a pharmacy technician is subject to  
20 denial under Code section 480, subdivisions (a)(1) and (a)(3)(A) in that he was convicted of a  
21 crime that is substantially related to the qualifications, duties, and functions of a pharmacy  
22 technician, which would also be a ground for discipline for a licensed pharmacy technician under  
23 Code section 4301, subdivision (l). The circumstances are as follows:

24 a. On or about November 12, 1991, in a criminal proceeding entitled *The*  
25 *People of the State of California vs. Richard David Freitas*, in the Riverside County Municipal  
26 Court Riverside Hall of Justice, Case Number 268722, Respondent was convicted on his plea of  
27 *nolo contendere* to violating PC section 647 subdivision (b), disorderly conduct – soliciting a  
28 prostitute, a misdemeanor.

1           b.     As a result of the conviction, on or about November 12, 1991, Respondent  
2 was sentenced to 24 months informal probation and ordered to serve five days in Riverside  
3 County Jail and pay a \$366.00 fine.

4           c.     The facts that led to the conviction are that on or about September 12,  
5 1991, Respondent was arrested for soliciting a prostitute in Riverside, California.

6                                   **FIFTH CAUSE FOR DENIAL OF APPLICATION**

7                                   **(February 2, 1993 Criminal Conviction for Resisting Arrest)**

8           16.     Respondent's application for registration as a pharmacy technician is subject to  
9 denial under Code section 480, subdivisions (a)(1) and (a)(3)(A) in that he was convicted of a  
10 crime that is substantially related to the qualifications, duties, and functions of a pharmacy  
11 technician, which would also be a ground for discipline for a licensed pharmacy technician under  
12 Code section 4301, subdivision (l). The circumstances are as follows:

13           a.     On or about February 2, 1993, in a criminal proceeding entitled *The*  
14 *People of the State of California vs. Richard David Freitas*, in Stanislaus County Superior Court  
15 Turlock Division, Case Number T-963207, Respondent was convicted for violating PC  
16 section 148, resisting, delaying, or obstructing a public officer, a misdemeanor pursuant to PC  
17 section 17 subdivision (b)(4).

18           b.     As a result of the conviction, on or about February 2, 1993, Respondent  
19 was sentenced to informal probation and ordered to serve two days in the Stanislaus County Jail  
20 and pay a fine.

21           c.     The facts that led to the conviction are that Respondent took part in a  
22 brawl during a super bowl party. When police officers responded, Respondent was belligerent  
23 and uncooperative.

24                                   **SIXTH CAUSE FOR DENIAL OF APPLICATION**

25                                   **(October 1, 1996 Criminal Conviction for Disturbing the Peace on September 23, 1996)**

26           17.     Respondent's application for registration as a pharmacy technician is subject to  
27 denial under Code section 480, subdivisions (a)(1) and (a)(3)(A) in that he was convicted of a  
28 crime that is substantially related to the qualifications, duties, and functions of a pharmacy

1 technician, which would also be a ground for discipline for a licensed pharmacy technician under  
2 Code section 4301, subdivision (l). The circumstances are as follows:

3 a. On or about October 1, 1996, in a criminal proceeding entitled *The People*  
4 *of the State of California vs. Richard David Freitas*, in Stanislaus County Superior Court  
5 Modesto Central, Case Number 67623, Respondent was convicted for violating PC section 415  
6 subdivision (2), disturbance by loud and unreasonable noise, a misdemeanor.

7 b. As a result of the conviction, on or about October 1, 1996, Respondent  
8 was sentenced to 36 months informal probation and ordered to serve 15 days in the Stanislaus  
9 County Jail and pay a fine.

10 c. The facts that led to the conviction are that Respondent hosted a party in  
11 his house which remained loud after an earlier warning by a responding police officer.

12 **SEVENTH CAUSE FOR DENIAL OF APPLICATION**

13 **(Feb. 6, 1997 Conviction for Illegal Possession of a Controlled Substance on Nov. 14, 1994)**

14 18. Respondent's application for registration as a pharmacy technician is subject to  
15 denial under Code section 480, subdivisions (a)(1) and (a)(3)(A) in that he was convicted of a  
16 crime that is substantially related to the qualifications, duties, and functions of a pharmacy  
17 technician, which would also be a ground for discipline for a licensed pharmacy technician under  
18 Code section 4301, subdivision (l). The circumstances are as follows:

19 a. On or about February 6, 1997, in a criminal proceeding entitled *The*  
20 *People of the State of California vs. Richard David Freitas*, in Stanislaus County Superior Court  
21 Modesto Central, Case Number 61103, Respondent was convicted for violating Health and  
22 Safety Code (HSC) section 11377, unauthorized possession of a controlled substance, a  
23 misdemeanor pursuant to PC 17 subdivision (b)(4).

24 b. As a result of the conviction, on or about February 2, 1997, Respondent  
25 was sentenced to 36 months informal probation and ordered to serve 60 days in Stanislaus  
26 County Jail and pay a fine. On or about August 12, 1997, Respondent failed to appear at a  
27 scheduled statutory probation hearing. As such, Respondent's probation was modified and he  
28 was ordered to serve 110 days in Stanislaus County Jail.



1 c. The facts that led to the conviction are that Respondent was arrested for  
2 possession of methamphetamine.

3 **EIGHTH CAUSE FOR DENIAL OF APPLICATION**

4 **(Feb. 20, 1997 Criminal Conviction for Unauthorized Taking of Bike/Boat on Feb. 5, 1997)**

5 19. Respondent's application for registration as a pharmacy technician is subject to  
6 denial under Code section 480, subdivisions (a)(1) and (a)(3)(A) in that he was convicted of a  
7 crime that is substantially related to the qualifications, duties, and functions of a pharmacy  
8 technician, which would also be a ground for discipline for a licensed pharmacy technician under  
9 Code section 4301, subdivision (l). The circumstances are as follows:

10 a. On or about February 20, 1997, in a criminal proceeding entitled *The*  
11 *People of the State of California vs. Richard David Freitas*, in Stanislaus County Superior Court  
12 Criminal Division, Case Number 128823, Respondent was convicted for violating PC section  
13 499 subdivision (b), taking a bicycle or a boat for the purpose of temporary use or operation  
14 without the permission of the owner, a misdemeanor.

15 b. As a result of the conviction, on or about February 20, 1997, Respondent  
16 was sentenced to 36 months probation and ordered to serve 30 days in the Stanislaus County Jail.  
17 On or about August 12, 1997, Respondent failed to appear at a scheduled statutory probation  
18 hearing. As such, Respondent's probation was modified and he was ordered to serve 40 days in  
19 the Stanislaus County Jail.

20 c. The facts that led to the conviction are that according to Respondent, he  
21 borrowed his friend's truck and did not return it for four days.

22 **NINTH CAUSE FOR DENIAL OF APPLICATION**

23 **(September 21, 2009 Criminal Conviction for DUI and Resisting Arrest on August 8, 2009)**

24 20. Respondent's application for registration as a pharmacy technician is subject to  
25 denial under Code section 480, subdivisions (a)(1) and (a)(3)(A) in that he was convicted of a  
26 crime that is substantially related to the qualifications, duties, and functions of a pharmacy  
27 technician, which would also be a ground for discipline for a licensed pharmacy technician under  
28 Code section 4301, subdivisions (h) and (l). The circumstances are as follows:

1 a. On or about September 21, 2009, in a criminal proceeding entitled *The*  
2 *People of the State of California vs. Richard David Freitas*, in Orange County Superior Court  
3 North Justice Center, Case Number 09NM10885, Respondent was convicted on his plea of guilty  
4 to violating PC section 148 subdivision (a)(1), resisting, delaying, or obstructing a public officer  
5 and Vehicle Code (VC) 23152 subdivision (a), driving under the influence of alcohol or a drug,  
6 or under the combined influence, both misdemeanors. Respondent was also charged with  
7 violating VC section 2800 subdivision (a), failure to comply with a lawful order of a peace  
8 officer and VC section 23152 subdivision (b), driving while having a blood alcohol content  
9 (BAC) of 0.08 percent or more with an enhancement pursuant to PC section 23578, for having a  
10 BAC of 0.15 percent or higher, both misdemeanors, which were dismissed as a result of a plea  
11 bargain.

12 b. As a result of the convictions, on or about September 21, 2009,  
13 Respondent was sentenced to informal probation for three years, and ordered to serve one day in  
14 the Orange County Jail with credit for time served. Respondent was also ordered to pay a total of  
15 \$1,890.00 in fines and fees, and to attend a six-month Level 2 First offender Alcohol Program.

16 c. The facts that led to the conviction are that on or about August 8, 2009,  
17 Respondent went out with some friends, had too much to drink, and thereafter, decided to drive  
18 home in Anaheim, California. At a check point manned by officers dispatched from the Anaheim  
19 Police Department, Respondent drove around police cars and disobeyed uniformed officers'  
20 commands to stop his vehicle. Respondent ultimately stopped. An Officer observed that  
21 Respondent smelled of alcohol, had red and watery eyes, and was argumentative. Respondent  
22 stood up despite an order to sit down and began advancing towards the Officers in an angry  
23 manner. Respondent resisted Officers' attempts to handcuff him. Respondent was subdued only  
24 after the officers used physical force and a taser. Respondent admitted to drinking two pitchers of  
25 beer.

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**TENTH CAUSE FOR DENIAL OF APPLICATION**

**(Unprofessional Conduct – Commission of Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

21. Respondent’s application for registration as a pharmacy technician is subject to denial under Code section 4301, subdivision (f) in that he committed acts which involve moral turpitude, dishonesty, fraud, deceit, and corruption, which would be grounds for discipline for a licensed technician. Respondent committed theft twice, shot a neighbor’s dog with an air rifle, solicited a prostitute, resisted arrest by lawful authorities twice, disturbed the peace by making noise after being warned to be quiet, possessed a controlled substance, took a vehicle without authority, and drank alcohol to the extent and in a manner that was dangerous and injurious to himself and others, as described in the causes above, which are incorporated by reference.

**ELEVENTH CAUSE FOR DENIAL OF APPLICATION**

**(Unprofessional Conduct - Knowingly Making and Signing a Document That Falsely Represents the Nonexistence of a State of Facts)**

22. Respondent’s application for registration as a pharmacy technician is subject to denial under Code section 480, subdivisions (a)(2) and (a)(3)(A) in that on or about August 4, 2011, he certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. However, Respondent failed to report eight criminal convictions spanning the period January 27, 1986 to February 20, 1997. Respondent disclosed only his criminal convictions on or about September 21, 2009 for violating PC section 148 subdivision (a)(1), resisting, delaying, or obstructing a public officer and Vehicle Code (VC) 23152 subdivision (a), driving under the influence of alcohol or a drug, or under the combined influence, both misdemeanors. Respondent’s dishonesty would also be grounds for discipline for a licensed pharmacy technician under Code section 4301, subdivision (g).

**TWELFTH CAUSE FOR DENIAL OF APPLICATION**

**(Unprofessional Conduct - Dangerous Use of Alcohol)**

23. Respondent’s application for registration as a pharmacy technician is subject to denial under Code section 480, subdivision (a)(3)(A) in that on or about August 8, 2009, he used

1 alcohol to the extent and in a manner that was dangerous and injurious to himself and to the  
2 public, which would also be a ground for discipline for a licensed pharmacy technician under  
3 Code section 4301, subdivision (h) in that the extent of the use impaired the ability of the  
4 registered person to conduct with safety to the public the practice authorized by the license.

5 **THIRTEENTH CAUSE FOR DENIAL OF APPLICATION**

6 **(Unprofessional Conduct – Violation of Drug Regulation Laws)**

7 24. Respondent's application for registration as a pharmacy technician is subject to  
8 denial under Code section 480, subdivision (a)(3)(A) in that on or about November 14, 1994, he  
9 violated HSC section 11377, unauthorized possession of a controlled substance, a misdemeanor  
10 pursuant to PC 17 subdivision (b)(4), a statute of the State of California regulating controlled  
11 substances and dangerous drugs, which would be a ground for discipline for a licensed pharmacy  
12 technician under Code section 4301, subdivision (j).

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 Richard David Freitas for a Pharmacy Technician  
17 Registration;  
18 2. Taking such other and further action as deemed necessary and proper.  
19

20  
21  
22 DATED: 7/19/12



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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