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

11 In the Matter of the Statement of Issues Against:

Case No. 4426

12 **MICHAEL JOE MATTIA**

STATEMENT OF ISSUES

13 Pharmacy Technician Applicant

14 Respondent.

15
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 February 16, 2012, the Board of Pharmacy, Department of Consumer
21 Affairs, received an application for a Pharmacy Technician Registration from Michael Joe Mattia
22 (Respondent). On or about December 13, 2011, Michael Joe Mattia certified under penalty of
23 perjury to the truthfulness of all statements, answers, and representations in the application. The
24 Board denied the application on June 8, 2012.

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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 "The board may refuse a license to
6 any applicant guilty of unprofessional conduct."

7 **STATUTORY PROVISIONS**

8 5. Section 475 of the Code states:

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

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

13 (2) Conviction of a crime.

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

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

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19 6. Section 480 of the Code states:

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

22 (1) Been convicted of a crime. A conviction within the meaning of this section
23 means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
24 Any action that a board is permitted to take following the establishment of a
25 conviction may be taken when the time for appeal has elapsed, or the judgment of
26 conviction has been affirmed on appeal, or when an order granting probation is made
27 suspending the imposition of sentence, irrespective of a subsequent order under the
28 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.

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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 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:

....

(1) 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

1 suspending the imposition of sentence, irrespective of a subsequent order under
2 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
3 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
4 dismissing the accusation, information, or indictment.

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5 **REGULATORY PROVISIONS**

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

7 (a) When considering the denial of a facility or personal license under Section
8 480 of the Business and Professions Code, the board, in evaluating the rehabilitation
9 of the applicant and his present eligibility for licensing or registration, will consider
10 the following criteria:

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

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

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

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

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

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

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

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FIRST CAUSE FOR DENIAL OF APPLICATION

**(March 8, 2005 Criminal Conviction for Possession of Drug Paraphernalia
on December 16, 2004)**

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

The circumstances are as follows:

13. On or about March 8, 2005, in a criminal proceeding entitled *State of Arizona v. Michael Joe Mattia*, in the Superior Court of Arizona, County of Yuma, Case Number S1400CR200500165, Respondent was convicted on his plea of guilty to violating Arizona Revised Statutes section 13-3415(A) (possession of drug paraphernalia), a class six felony.

14. As a result of the conviction, the Court placed Respondent on two years supervised probation and ordered that Respondent pay various fees and fines, not consume alcoholic beverages, and participate and cooperate in any counseling or assistance as directed by the Arizona Probation Department.

15. The circumstances surrounding the conviction are that on December 16, 2004, Yuma County Sheriff’s Deputies were dispatched to the Border Patrol checkpoint located at milepost 17 of eastbound Interstate 8 in reference to a drug offense. Upon arrival, deputies learned that a law enforcement canine alerted to Respondent’s vehicle and Respondent was sent to a secondary inspection area where Respondent admitted to being in possession of a handgun. The canine did a further search of the vehicle and alerted to a duffle bag and jacket. Respondent admitted he had marijuana in his duffle bag. A search of the duffle bag revealed a Ruger 9mm handgun with a loaded ten-round magazine, a second loaded ten-round magazine, and a box of ammunition with no round in the changer. Deputies also found a plastic baggie containing a green leafy substance and a glass pipe with residue. Found in a jacket was a metal mint tin that contained a small plastic baggie with a white rock-like substance. Respondent denied the “cocaine” was his. The white rock-like substance field tested positive for cocaine and weighed 0.2 ounces, with an estimated street value of \$100.

1 16. On or about July 27, 2007, the court granted Respondent's petition to be discharged
2 from probation, and to have the offense for possession of drug paraphernalia be designated a
3 Class A Class One misdemeanor, and to have Respondent's DNA expunged from the Arizona
4 Department of Public Safety data bank.

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6 **SECOND CAUSE FOR DENIAL OF APPLICATION**

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

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

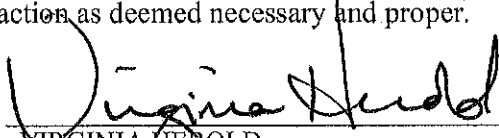
12 18. On or about March 8, 2005 as detailed in paragraphs 12 through 16, above,
13 Respondent was convicted of crimes substantially related to the qualifications, functions, and
14 duties of a licensed pharmacy technician, which would be grounds for discipline under section
15 4301, subdivision (l) of the Code.

16 **PRAYER**

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

- 19 1. Denying the application of Michael Joe Mattia for a Pharmacy Technician
20 Registration;
21 2. Taking such other and further action as deemed necessary and proper.

22 DATED: 1/18/13

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

SD2012704150