1 2 3 4 5 6 7 8 9	BOARD OF	RE THE PHARMACY ONSUMER AFFAIRS	
10	STATE OF CALIFORNIA		
11 12	In the Matter of the Statement of Issues Against:	Case No. 4830	
13	BRUCE ALAN MCDANIELS		
14	Pharmacy Technician Registration	STATEMENT OF ISSUES	
15	Applicant		
16	Respondent.		
17			
18	Complainant alleges:		
19	PARTIES		
20	1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official		
21_	capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.		
22	2. On or about December 24, 2012, the Board of Pharmacy, Department of Consumer		
23	Affairs received an application for a Pharmacy Technician Registration from Bruce Alan		
24	McDaniels (Respondent). On or about November 28, 2012, Bruce Alan McDaniels certified		
25	under penalty of perjury to the truthfulness of all statements, answers, and representations in the		
26	application. The Board denied the application on April 11, 2013.		
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		STATEMENT OF ISSUES	

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 480 of the Code states, in pertinent part:	
7	"(a) A board may deny a license regulated by this code on the grounds that the applicant	
8	has one of the following:	
9	9 "(1) Been convicted of a crime. A conviction within the meaning of this section means a	
10	plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a	
11	board is permitted to take following the establishment of a conviction may be taken when the time	
12	for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an	
13	order granting probation is made suspending the imposition of sentence, irrespective of a	
14	subsequent order under the provisions of Section 1203.4 of the Penal Code.	
15	"	
16	"(3)(B) The board may deny a license pursuant to this subdivision only if the crime or act is	
17	substantially related to the qualifications, functions, or duties of the business or profession for	
18	which application is made"	
19	5. Section 4300(c) of the Code states, in pertinent part, that the board may refuse a	
20	license to any applicant guilty of unprofessional conduct.	
21_	6. Section 4301 of the Code states, in pertinent part:	
22	"The board shall take action against any holder of a license who is guilty of unprofessional	
23	conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.	
24	Unprofessional conduct shall include, but is not limited to, any of the following:	
25	"	
26	"(h) The administering to oneself, of any controlled substance, or the use of any dangerous	
27	drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to	
28	oneself, to a person holding a license under this chapter, or to any other person or to the public, or	
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STATEMENT OF ISSUES

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.

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

7 "(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 13 8 9 (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 10 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the 11 record of conviction shall be conclusive evidence only of the fact that the conviction occurred. 12 13 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 14 dangerous drugs, to determine if the conviction is of an offense substantially related to the 15 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or 16 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning 17 of this provision. The board may take action when the time for appeal has elapsed, or the 18 19 judgment of conviction has been affirmed on appeal or when an order granting probation is made 20 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not 21 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or 22 indictment. . . ." 23

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REGULATORY PROVISION

7. California Code of Regulations, title 16, section 1770, states:
"For the purpose of denial, suspension, or revocation of a personal or facility license
pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
crime or act shall be considered substantially related to the qualifications, functions or duties of a

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1	licensee or registrant if to a substantial degree it evidences present or potential unfitness of a		
2	licensee or registrant to perform the functions authorized by his license or registration in a manne		
3	consistent with the public health, safety, or welfare."		
4	FIRST CAUSE FOR DENIAL OF APPLICATION		
5	(Criminal Convictions)		
6	Conviction No. 1		
7	8. Respondent's application is subject to denial under Section 4301(<i>l</i>), by and through		
8	Section 480, subdivision (a)(1), of the Code, in conjunction with California Code of Regulations,		
9	title 16, section 1770, in that on or about November 18, 1991, in a criminal proceeding entitled		
10	The People of the State of California v. Bruce McDaniels, in the Municipal Court of California,		
11	County of Fresno, Case Number M053726-6, Respondent was convicted by plea of guilty for		
12	violating Vehicle Code section 23152(a) (driving under the influence of alcohol) and Health and		
13	Safety Code section 1150(a) (possession of a controlled substance [marijuana]), a misdemeanor.		
14	Respondent was sentenced to three years probation, ninety days of jail, and a fine.		
15 ⁻	Conviction No. 2		
16	9. Respondent's application is subject to denial under Section 4301(<i>l</i>), by and through		
17	Section 480, subdivision (a)(1) of the Code, in conjunction with California Code of Regulations,		
18	title 16, section 1770, in that on or about June 29, 2001, in a criminal proceeding entitled <i>The</i>		
19	People of the State of California v. Bruce Alan McDaniels, in the Municipal Court of California,		
20	County of Fresno, Case Number M01903192-3, Respondent was convicted of violating Health		
21	and Safety Code section 11364 (possession of controlled substance paraphernalia [a crack pipe]),		
22	a misdemeanor. Respondent was sentenced to three years probation and three days of jail. The		
23	facts and circumstances of this conviction are as follows:		
24	a. On or about February 23, 2001, when a Fresno Police Officer conducted a traffic stop		
25	on a vehicle in which Respondent was a passenger, the officer discovered that Respondent		
26	possessed a crack pipe as well as an open container of alcohol.		
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	STATEMENT OF ISSUES		

Conviction No. 3

2 10. Respondent's application is subject to denial under Section 4301(l) of the Code, by and through Section 480, subdivision (a)(1) of the Code, in conjunction with California Code of 3 Regulations, title 16, section 1770, in that on or about February 26, 2002, in a criminal proceeding 4 entitled The People of the State of California v. Bruce Alan McDaniels, in the Superior Court of 5 6 California, County of Fresno, Case Number M01915044-2, Respondent was convicted of 7 violating Health and Safety Code section 11364 (possession of controlled substance paraphernalia [a crack pipe]), a misdemeanor. Respondent was sentenced to three years probation, ten days of 8 jail, and to enroll in and complete a work program. The facts and circumstances of this 9 conviction are as follows: 10

a. On or about October 6, 2001, while a Fresno Police Officer was conducting drug
surveillance, the officer spoke with Respondent and discovered that Respondent possessed a crack
pipe.

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Conviction No. 4

Respondent's application is subject to denial under Section 4301(l) of the Code, by 11. 15 and through Section 480, subdivision (a)(1) of the Code, in conjunction with California Code of 16 Regulations, title 16, section 1770, in that on or about October 14, 2003, in a criminal proceeding 17 entitled The People of the State of California v. Bruce Alan McDaniels, in the Superior Court of 18 California, County of Fresno, Case Number M03916051-6, Respondent was convicted by plea of 19 nolo contendere for violating Penal Code section 484(a) (theft), a misdemeanor. Respondent was 20 sentenced to three years probation, ten days of jail, and a fine. The facts and circumstances of this 21 conviction are as follows: 22

a. On or about August 13, 2003, a Fresno Police Officer arrested Respondent after
Respondent stole a shower radio from a Rite Aid store.

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SECOND CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct—Unsafe use of Dangerous Drugs and Alcoholic Beverages) Respondent's application is subject to denial under section 4301, subdivision (h), of 12. the Code in that Respondent has used dangerous drugs and alcoholic beverages to the extent or in a manner as to be dangerous or injurious to himself, 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 ability of Respondent to conduct with safety to the public the practice of a pharmacy technician. The facts and circumstances are set forth in more particularity in paragraph 8 and as follows:

On or about June 29, 2006, two Fresno Police Officers approached Respondent and 9 a. another individual who were loitering next to a business. While searching Respondent, one of the 10 officers observed that Respondent appeared to be under the influence of drugs in that Respondent 11 had constricted pupils, eyelid tremors, hippus (spasmodic, rhythmic, irregular dilating and 12 contracting pupillary movements), excited and repetitive speech, a confused and nervous/paranoid 13 mental state, sweating, a bad complexion, fast respiration, rigid muscle tone, burns on his 14 fingertips, grinding teeth, scratching, dry mouth, a coating on his tongue, and body tremors. 15 Respondent admitted to having smoked "rock cocaine" that day, that he felt the effects of the 16 drug, and that he used cocaine three-to-four times per day. The officers cited Respondent for 17 being under the influence. 18

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On or about September 7, 2001, a Fresno County police officer observed Respondent b. passed-out on a bench, smelling of alcohol, and having slurred speech and an unsteady gait. The officer arrested Respondent and booked him into jail.

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On or about October 16, 2001, a Fresno County police officer observed Respondent c. with red, watery, bloodshot eyes, slurred speech, an unsteady gait, and a heavy odor of alcohol. 23 The officer arrested Respondent and booked him into jail. 24

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	1	THIRD CAUSE FOR DENIAL OF APPLICATION		
	2	(Unprofessional Conduct-Act-Violation of State Statues Regulating Controlled Substances and		
	3	3 Dangerous Drugs)		
	4	13. Respondent's application is subject to denial under Section 4301, subdivision (j), of		
	5	the Code in that Respondent has been convicted of violating provisions of the Health and Safety		
	6 Code regulating controlled substances and dangerous drugs as more fully set forth			
	7	8-11.		
•	8	PRAYER		
	9	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,		
	10	and that following the hearing, the Board of Pharmacy issue a decision:		
11		1. Denying the application of Bruce Alan McDaniels for a Pharmacy Technician		
	12	Registration; and		
	13	2. Taking such other and further action as deemed necessary and proper		
	14	DATED: 12/2/13 liginaledd		
	15	VIRGINIA NEROLD Executive Officer		
	16	Board of Pharmacy Department of Consumer Affairs		
	17	State of California Complainant		
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