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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. 5084

12 **JESSICA MORIEL STACY**
13 **4009 SANTA FE WAY**
14 **NORTH HIGHLANDS, CA 95660**

STATEMENT OF ISSUES

15 Respondent.

16
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 2. On or about May 14, 2013, the Board of Pharmacy, Department of Consumer Affairs
22 received an application for registration as a Pharmacy Technician from Jessica Moriel Stacy. On
23 or about April 10, 2013, Jessica Moriel Stacy certified under penalty of perjury to the truthfulness
24 of all statements, answers, and representations in the application. The Board denied the
25 application on November 4, 2013.

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JURISDICTION

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

4. Section 4300 of the Code states:

....

"(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

"(1) Medical or psychiatric evaluation.

"(2) Continuing medical or psychiatric treatment.

"(3) Restriction of type or circumstances of practice.

"(4) Continuing participation in a board-approved rehabilitation program.

"(5) Abstention from the use of alcohol or drugs.

"(6) Random fluid testing for alcohol or drugs.

"(7) Compliance with laws and regulations governing the practice of pharmacy.

5. 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:

"(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.

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

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

6 "(k) The conviction of more than one misdemeanor or any felony involving the use,
7 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
8 combination of those substances.

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

26 6. Section 480 of the Code states:

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

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

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

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

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

14 "(b) Notwithstanding any other provision of this code, no person shall be denied a license
15 solely on the basis that he or she has been convicted of a felony if he or she has obtained a
16 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
17 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
18 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
19 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
20 Section 482.

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

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

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

FIRST CAUSE FOR DENIAL OF APPLICATION

(Substantially Related Convictions Involving Alcohol)

8. Respondent's application for registration is subject to denial pursuant to Section 480, subdivision (a)(1), in that Respondent was convicted of the following substantially related crimes:

A. On September 11, 2007, based upon her plea of nolo contendere in the criminal proceeding *The People of the State of California v Jessica Moriel Stacy* (Superior Court San Luis Obispo County, 2007, No. M407122), Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152(b), driving under the influence and while having a blood alcohol level of .08% or more. On August 19, 2007, the San Luis Obispo Sheriff's Department arrested Respondent for driving under the influence of an alcohol beverage. Respondent was ordered by the court to attend a three month Alcohol Counseling Program and placed on probation for a period of 36 months with terms and conditions.

B. On June 1, 2009, based upon her plea of nolo contendere in the criminal proceeding *The People of the State of California v Jessica Moriel Stacy* (Superior Court San Luis Obispo County, 2009, No. M000430862), Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152(b), driving under the influence and while having a blood alcohol level of .08% or more. The circumstances of the crime were that on March 15, 2009, the California Highway patrol arrested respondent for driving under the influence of alcohol.

Respondent was court ordered to pay \$2,091.00 in fines and placed on probation for a period of 36 months with terms and conditions. Respondent was also found to have committed a violation of the probation imposed by the court in case no. M407122, referenced above, and was sentenced to 30 days in county jail to run concurrent with case no. M000430862. Probation in case no. M407122 was extended until June 1, 2011.

C. On March 8, 2012, based upon her plea of no contest in the criminal proceeding titled *People v. Jessica Moriel Stacy* (San Luis Obispo Superior Court Case No. M000466989), Respondent was convicted of one misdemeanor count of violating Penal Code section 273.5(A)

1 (inflicting corporal injury upon a spouse or cohabitant). The circumstances of the crime were that
2 on October 30, 2011, during an argument, Respondent hit her boyfriend with a chair. The court
3 also found a violation of the probation imposed in case no. M000430862 and extended probation
4 until June 1, 2013.

5 **SECOND CAUSE FOR DENIAL OF APPLICATION**

6 **(False Statement/Deceitful, Dishonest Acts)**

7 9. Respondent's application for registration is subject to denial pursuant to Section 480,
8 subdivisions (a)(2) and (c), in that Respondent committed acts of deceit and dishonesty with the
9 intent to benefit herself by making false statements in her license application as follows:

10 A. Question number 7 on the Pharmacy Technician Application states: "Have you
11 ever been convicted of any crime in any state, the USA and its territories, military court or foreign
12 country?" In response to this question, Respondent disclosed the 2007 and 2009 convictions set
13 forth above in paragraph 8A and 8B, but failed to disclose her conviction of March 8, 2012, set
14 forth above in paragraph 8C.

15 B. Question number 5 on the Pharmacy Technician Application states: "Have you
16 ever had a pharmacy permit, or any professional or vocational license or registration, denied or
17 disciplined by a government authority in this state or any other state?" In response to this
18 question, Respondent checked the "No" box. In fact, effective June 28, 2010, the California
19 Board of Vocational Nursing and Psychiatric Technicians revoked Respondent's Psychiatric
20 Technician License No. PT 32745.

21 **THIRD CAUSE FOR DENIAL OF APPLICATION**

22 **(Acts If Committed By a Licensee)**

23 10. Respondent's application for registration is subject to denial pursuant to Section 480,
24 subdivision (a)(3)(A), in that as set forth above in paragraphs 8 and 9, Respondent committed acts
25 that if done by a licensee would be grounds for suspension or revocation of license under section
26 4301, subdivisions (h), (k), and (l) (see paragraph 8, above), and subdivisions (f) and (g) (see
27 paragraph 9, above).

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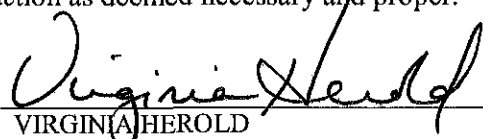
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PRAYER

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

1. Denying the application of Jessica Moriel Stacy for registration as a Pharmacy Technician;
2. Taking such other and further action as deemed necessary and proper.

DATED: 9/13/14


VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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