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

11 In the Matter of the Statement of Issues
Against:
12 **JAMES DONALD JACKMAN**
13 Pharmacy Technician Registration Applicant
14 Respondent.

Case No. 5394

STATEMENT OF ISSUES

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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 (Board), Department of Consumer
21 Affairs.

22 2. On or about March 24, 2014, the Board received an application for a Pharmacy
23 Technician Registration from James Donald Jackman (Respondent). On or about March 20, 2014,
24 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and
25 representations in the application. The Board denied the application on December 19, 2014.

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1 **JURISDICTION**

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

5 4. Section 4300, subdivision (c), states, in pertinent part:

6 "The board may refuse a license to any applicant guilty of unprofessional conduct. The
7 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
8 guilty of unprofessional conduct and who has met all other requirements for licensure. . . ."

9 **STATUTORY AND REGULATORY PROVISIONS**

10 5. Section 480 states, in pertinent part:

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

13 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
14 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
15 board is permitted to take following the establishment of a conviction may be taken when the time
16 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an
17 order granting probation is made suspending the imposition of sentence, irrespective of a
18 subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

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

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

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

26 "(b) Notwithstanding any other provision of this code, a person shall not be denied a
27 license solely on the basis that he or she has been convicted of a felony if he or she has obtained a
28 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of

1 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
2 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
3 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
4 Section 482.

5 "(c) Notwithstanding any other provisions of this code, a person shall not be denied a
6 license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4,
7 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed
8 pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the
9 dismissal."

10 6. Section 4301 states, in pertinent part:

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

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

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

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25 "(l) The conviction of a crime substantially related to the qualifications, functions, and
26 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
27 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
28 substances or of a violation of the statutes of this state regulating controlled substances or

1 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
2 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
3 The board may inquire into the circumstances surrounding the commission of the crime, in order to
4 fix the degree of discipline or, in the case of a conviction not involving controlled substances or
5 dangerous drugs, to determine if the conviction is of an offense substantially related to the
6 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
7 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
8 of this provision. The board may take action when the time for appeal has elapsed, or the
9 judgment of conviction has been affirmed on appeal or when an order granting probation is made
10 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
11 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
12 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
13 indictment."

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

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

21 **FIRST CAUSE FOR DENIAL OF APPLICATION**

22 **(Convictions of Substantially Related Crimes)**

23 8. Respondent's application is subject to denial under section 480, subdivision (a)(1), in
24 conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was
25 convicted of crimes substantially related to the qualifications, functions or duties of a registered
26 pharmacy technician, as follows:

27 a. On or about August 22, 2013, after pleading guilty, Respondent was convicted of one
28 misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while having

1 0.08% or more, by weight, of alcohol in his blood] in the criminal proceeding entitled *The People*
2 *of the State of California v. James Donald Jackman* (Super. Ct. San Bernardino County, 2013,
3 No. TVA1301408.) The Court sentenced Respondent to serve 79 days in San Bernardino County
4 Jail, ordered him to attend a 9 month alcohol program, and placed him on 36 months' probation,
5 with terms and conditions.

6 b. The circumstances surrounding the conviction are that on or about June 2, 2013, the
7 California Highway Patrol Department initiated a traffic enforcement stop after observing
8 Respondent's vehicle traveling at a high rate of speed. The officer approached Respondent's
9 vehicle on the passenger side and knocked on the window but Respondent ignored the knock and
10 kept looking straight ahead. The officer then opened the passenger's side door and immediately
11 smelled a strong odor of an alcoholic beverage emitting from within the vehicle. Respondent
12 failed to turn off his car, as directed by the police officer. The officer removed the keys from the
13 ignition and helped Respondent exit the vehicle. Respondent was unable to stand on his own.
14 Respondent submitted to a blood test resulting in a blood-alcohol concentration level of 0.25%.

15 **SECOND CAUSE FOR DENIAL OF APPLICATION**

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

17 9. Respondent's application is subject to denial under section 480, subdivision (a)(2), in
18 that Respondent committed acts involving dishonesty, fraud, or deceit with the intent to
19 substantially benefit himself, or substantially injure another, as folloes:

20 a. On or about May 18, 2005, after pleading nolo contendere, Respondent was convicted
21 of one misdemeanor count of violating Penal Code 485 [misappropriation of lost property] in the
22 criminal proceeding entitled *The People of the State of California v. James Donald Jackman*
23 (Super. Ct. L.A. County, 2005, No. 5PA46348). The Court ordered Respondent to complete 20
24 days of Caltrans work and placed him on two years' probation, with terms and conditions. On or
25 about January 29, 2015, the Court dismissed the matter pursuant to Penal Code section 1203.4.

26 b. The circumstances surrounding the conviction are that on or about April 13, 2005, an
27 Arcadia police officer conducted a traffic enforcement stop on Respondent's vehicle. During a
28 search of Respondent's vehicle, the officer found three business signs in Respondent's trunk: one

1 blue Washington Mutual bank parking sign and two no-trespassing signs belonging to an office
2 building in Monrovia. Respondent was asked if he was aware that the three signs were probably
3 stolen. Respondent agreed that the signs were probably stolen but indicated that he did not steal
4 them.

5 **THIRD CAUSE FOR DENIAL OF APPLICATION**

6 **(Acts Warranting Denial of Licensure)**

7 10. Respondent's application is subject to denial under sections 4301, subdivision (p) and
8 480, subdivisions (a)(3)A) and (a)(3)(B), in that Respondent committed acts which if done by a
9 registered pharmacy technician, would be grounds for suspension or revocation of his license as
10 follows:

11 a. Respondent was convicted of crimes substantially related to the qualifications,
12 functions, or duties of a pharmacy technician which to a substantial degree evidence his present or
13 potential unfitness to perform the functions authorized by the license in a manner consistent with
14 the public health, safety, or welfare, in violation of sections 4031, subdivision (l), in conjunction
15 with California Code of Regulations, title 16, section 1770. Complainant refers to, and by this
16 reference incorporates, the allegations set forth above in paragraphs 8 and 9, as though set forth
17 fully.

18 b. Respondent committed acts involving dishonesty, fraud, or deceit, in violation of
19 section 4301, subdivision (f). Complainant refers to, and by this reference incorporates, the
20 allegations set forth above in paragraph 9, as though set forth fully.

21 c. Respondent used alcoholic beverages to an extent or in a manner dangerous or
22 injurious to himself, another person, or the public, in violation of section 4301, subdivision (h).
23 Complainant refers to, and by this reference incorporates, the allegations set forth above in
24 paragraphs 8, as though set forth fully.

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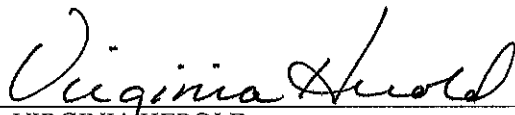
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PRAYER

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

1. Denying the application of James Donald Jackman for a Pharmacy Technician Registration; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 9/15/15 

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

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mc (8/13/15)