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

11 In the Matter of the Statement of Issues
12 Against:

Case No. 5420

13 **SALVADOR FERNANDO SILVA**

STATEMENT OF ISSUES

14 **Pharmacy Technician Registration**
15 **Applicant**

16 Respondent.

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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 May 9, 2014, the Board of Pharmacy, Department of Consumer Affairs,
23 received an application for a Pharmacy Technician Registration from Salvador Fernando Silva
24 (Respondent). On or about May 1, 2014, Respondent certified under penalty of perjury to the
25 truthfulness of all statements, answers, and representations in the application. The Board denied
26 the application on January 7, 2015.

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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 unless otherwise indicated.

5 4. On or about February 28, 2015, Respondent requested a hearing to appeal the denial
6 of his application.

7 **STATUTORY PROVISIONS**

8 5. Section 480 of the Code states, in pertinent part:

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

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

17 “. . .

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

20 “(B) The board may deny a license pursuant to this subdivision only if the crime or act is
21 substantially related to the qualifications, functions, or duties of the business or profession for
22 which application is made. . . .”

23 6. Section 4060 of the Code states, in pertinent part:

24 “No person shall possess any controlled substance, except that furnished to a person upon
25 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
26 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse
27 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
28 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,

1 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
2 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
3 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
4 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
5 nurse midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
6 labeled with the name and address of the supplier or producer. . . .”

7 7. Section 4300 of the Code states, in pertinent part:

8 "(a) Every license issued may be suspended or revoked.

9 ". . .

10 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. . . .”

11 8. Section 4301 of the Code states, in pertinent part:

12 "The board shall take action against any holder of a license who is guilty of unprofessional
13 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

14 Unprofessional conduct shall include, but is not limited to, any of the following:

15 "(a) Gross immorality.

16 ". . .

17 "

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

21 ". . .

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

24 ". . .

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
4 to 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 HEALTH AND SAFETY CODE

15 9. California Health and Safety Code section 11055 states, in pertinent part:

16 “(a) The controlled substances listed in this section are included in Schedule II.

17 “. . .

18 “(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any
19 material, compound, mixture, or preparation which contains any quantity of the following
20 substances having a stimulant effect on the central nervous system:

21 “. . .

22 “(2) Methamphetamine, its salts, isomers, and salts of its isomers. . . .”

23 10. California Health and Safety Code section 11378 states, in pertinent part:

24 “Except as otherwise provided in Article 7 (commencing with Section 4110) of Chapter 9
25 of Division 2 of the Business and Professions Code, a person who possesses for sale a controlled
26 substance that meets any of the following criteria shall be punished by imprisonment pursuant to
27 subdivision (h) of Section 1170 of the Penal Code:

28 “. . .

1 slept in the southwest corner bedroom of the residence. During the search of one of the bedrooms
2 in the residence, an officer discovered a Tupperware container with a tied-off clear plastic
3 sandwich baggie that held several smaller tied-off clear plastic baggies, each containing a quantity
4 of tan, pink, and gray powder or rock, later determined to be methamphetamine. In the same
5 bedroom, an officer found a backpack containing a larger square Tupperware container holding
6 two boxes of opened, clear, plastic sandwich baggies, and several other baggies, as well as an
7 operable electronic scale. Following the search, Respondent informed one of the officers that the
8 methamphetamine belonged to him. Respondent described the container for the
9 methamphetamine as being purple in color and made of plastic. Respondent described the
10 methamphetamine as being in three or four baggies, some clear and some pink. Respondent
11 informed the officer that he only sells a little methamphetamine, and that he only sells grams.
12 Respondent was arrested and transported to the Lodi Police Department.

13 **SECOND CAUSE FOR DENIAL OF APPLICATION**

14 **(Commission of Act Which If Done By Licentiate Would Be Grounds for Discipline)**

15 14. Respondent's application is subject to denial under sections 480(a)(3)(A) and 4060 of
16 the Code, in conjunction with sections 11055 and 11378 of the Health and Safety Code, in that on
17 or about April 9, 2002, Respondent was found to be in possession of a controlled substance,
18 methamphetamine. The circumstances are described with more particularity in paragraph 13 and
19 its subpart.

20 **THIRD CAUSE FOR DENIAL OF APPLICATION**

21 **(Unprofessional Conduct—Gross Immorality)**

22 15. Respondent's application is subject to denial under sections 4300, subdivision (c), and
23 4301, subdivision (a), of the Code in that on or about April 9, 2002, Respondent committed an act
24 of gross immorality by possessing, for sale, a controlled substance (methamphetamine). The
25 circumstances are described with more particularity in paragraph 13 and its subpart.

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FOURTH CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct—Commission of an Act Involving Moral Turpitude)

16. Respondent’s application is subject to denial under sections 4300, subdivision (c), and 4301, subdivision (f), of the Code in that on or about April 9, 2002, Respondent committed an act involving moral turpitude—possessing, for sale, a controlled substance (methamphetamine). The circumstances are described with more particularity in paragraph 13 and its subpart.

FIFTH CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct—Violation of Statutes Regulating controlled substances and Dangerous Drugs)


17. Respondent’s application is subject to denial under sections 4300, subdivision (c), and 4301, subdivision (j), of the Code in that on or about April 9, 2002, Respondent violated Health and Safety Code section 11378 regarding the possession of controlled substances. The facts and circumstances are described with more particularity in paragraph 13 and its subpart.

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 Salvador Fernando Silva for a Pharmacy Technician Registration; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 4/24/15


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

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