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7

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

10
11 In the Matter of the Second Amended
Statement of Issues Against:

Case No. 6006

12 **STACEY CHARESSE SILVA**

13 Pharmacy Technician Registration Applicant

**SECOND AMENDED STATEMENT OF
ISSUES**

14 Respondent.
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19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Second Amended Statement of Issues
22 solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of
23 Consumer Affairs (Board).

24 2. On or about March 28, 2016, the Board received an application for a Pharmacy
25 Technician Registration from Stacey Charesse Silva (Respondent). On or about March 25, 2016,
26 Stacey Charesse Silva certified under penalty of perjury to the truthfulness of all statements,
27 answers, and representations in the application. The Board denied the application on
28 September 2, 2016.

1 **JURISDICTION**

2 3. This Second Amended Statement of Issues is brought before the Board of Pharmacy
3 (Board), 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
6 **STATUTORY PROVISIONS**

7 4. Section 480 states, in pertinent part:

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

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

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

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 (b) Notwithstanding any other provision of this code, a person shall not be denied a
24 license solely on the basis that he or she has been convicted of a felony if he or she has obtained a
25 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
26 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
27 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
28 the rehabilitation of a person when considering the denial of a license under subdivision (a) of

1 Section 482.

2 (c) Notwithstanding any other provisions of this code, a person shall not be denied a
3 license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4,
4 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been
5 dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof
6 of the dismissal.

7 (d) A board may deny a license regulated by this code on the ground that the applicant
8 knowingly made a false statement of fact that is required to be revealed in the application for the
9 license.”

10 5. Section 490 states, in pertinent part:

11 “(a) In addition to any other action that a board is permitted to take against a licensee, a
12 board may suspend or revoke a license on the ground that the licensee has been convicted of a
13 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
14 or profession for which the license was issued.

15 (b) Notwithstanding any other provision of law, a board may exercise any authority to
16 discipline a licensee for conviction of a crime that is independent of the authority granted under
17 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
18 of the business or profession for which the licensee’s license was issued.

19 (c) A conviction within the meaning of this section means a plea or verdict of guilty or a
20 conviction following a plea of nolo contendere. An action that a board is permitted to take
21 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
22 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
23 made suspending the imposition of sentence, irrespective of a subsequent order under Section
24 1203.4 of the Penal Code.”

25 6. Section 492 states:

26 “Notwithstanding any other provision of law, successful completion of any diversion
27 program under the Penal Code, or successful completion of an alcohol and drug problem
28 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of

1 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
3 division, from taking disciplinary action against a licensee or from denying a license for
4 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
5 record pertaining to an arrest.

6 This section shall not be construed to apply to any drug diversion program operated by any
7 agency established under Division 2 (commencing with Section 500) of this code, or any
8 initiative act referred to in that division.”

9 7. Section 4059 provides that a person may not furnish any dangerous drug, except
10 pursuant to a valid prescription.

11 8. Section 4060 states:

12 “No person shall possess any controlled substance, except that furnished to a person upon
13 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
14 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse
15 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
16 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
17 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
18 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
19 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
20 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
21 nurse midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
22 labeled with the name and address of the supplier or producer.

23 Nothing in this section authorizes a certified nurse midwife, a nurse practitioner, a
24 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
25 devices.”

26 9. Section 4301 states, in pertinent part:

27 “The board shall take action against any holder of a license who is guilty of unprofessional
28 conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is

1 not limited to, any of the following:

2 ...

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

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

8 ...

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

11 ...

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

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(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency. . . .”

REGULATORY PROVISION

10. 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 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.”

CONTROLLED SUBSTANCE / DANGEROUS DRUG

11. Adderall, brand name of dextroamphetamine/amphetamine, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(d)(1), and a dangerous drug pursuant to section 4022.

12. Marijuana is a Schedule I controlled substance under State and federal law (Health & Saf. Code § 11054 subd. (d)(13); and 21 U.S.C. § 812.), and a dangerous drug pursuant to section 4022

13. Methamphetamine is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(d)(2), and a dangerous drug pursuant to section 4022.

14. Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057(d)(1), and a dangerous drug pursuant to section 4022.

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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Conviction of a Substantially Related Crime)**

3 15. Respondent's application is subject to denial under sections 480, subdivisions (a)(1),
4 (a)(3)(A), 490 and 4301, subdivision (l) in conjunction with California Code of Regulations, title
5 16, section 1770, in that Respondent has been convicted of a crime substantially related to the
6 qualifications, functions or duties of a pharmacy technician. Specifically, on September 11, 2018,
7 Respondent was convicted of one misdemeanor count of violating Penal Code section 530.5
8 subdivision (c)(1) [identity theft] in the criminal proceeding entitled *The People of the State of*
9 *California v. Stacey Charesse Silva* (Super. Ct. L.A. County, 2018, No. 8GD03253). The court
10 sentenced Respondent to serve 9 days in jail and placed on three (3) years' probation with terms
11 and conditions. Respondent was ordered to pay fines, fees and restitution.

12 The circumstances surrounding the conviction are that on or about September 7, 2018,
13 Glendale Police Officers contacted the Respondent near a Popeye's restaurant parking lot located
14 at 2900 E. Colorado Blvd. Officers asked Respondent if a bag found in close proximity belonged
15 to her, which Respondent denied. Upon being searched as abandoned property, officers located
16 "several manufactured and re-encoded access cards, including cards in [Respondent's] name."
17 The bag also contained syringes and a white crystalline substance later identified as
18 approximately 2.27 grams of methamphetamine. Upon a search of Respondent's vehicle, officers
19 also found a credit card embosser on the floorboard, in plain view. Upon further search, officers
20 also identified "blank card stock (with magnetic strip), re-encoded access cards, card
21 reader/writer software with instructions and a card reader/writer in the Respondent's vehicle.
22 Officer determined that cards in Respondent's possession belonged to others who did not know
23 the Respondent or provide Respondent with permission to possess the cards. Respondent was
24 subsequently arrested for violating Penal Code § 530.5(a)[obtaining personal information of
25 another to obtain credit, etc.], Penal Code § 484(a)[committing forgery for access card to
26 defraud], Penal Code § 484(c)[bearing false identification for access card] and Health and Safety
27 Code § 11377(a)[possession of controlled substance].

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1 two small round white pills marked "Mylan 4" (Alprazolam), plastic bags containing an off white
2 crystal substance resembling methamphetamine and digital scales commonly used in the sales of
3 narcotics. Officers also found four (4) Visa gift cards which had been re-encoded with different
4 account numbers to allow for fraudulent use. Respondent was subsequently charged with
5 violation of Health and Safety Code section 11377 [possessing a controlled substance], a
6 misdemeanor in the criminal proceeding entitled *The People of the State of California v. Stacey*
7 *Charesse Silva* (Super. Ct. L.A. County, 2018, No. 8GD00892). Respondent's sentence was
8 suspended for one (1) year pending Respondent's enrollment and completion of a diversion
9 program pursuant to Penal Code section 1000.

10
11 **THIRD CAUSE FOR DENIAL OF APPLICATION**

12 **(Misrepresentation in License Application)**

13 17. Respondent's application is subject to denial under sections 480, subdivision (d) and
14 4301, subdivision (g), on the grounds of unprofessional conduct, in that on or about March 25,
15 2016, Respondent knowingly made a false statement of fact required to be revealed in her
16 application for licensure by certifying under penalty of perjury to accuracy of all statements in the
17 application and answering "No" to question No. 2, "Have you previously engaged in the illegal
18 use of controlled substances?" Complainant refers to and by this reference incorporates the
19 allegations set forth above in paragraph 16, as though set forth fully herein.

20
21 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

22 **(Violating Pharmacy Law – Possessing and/or Furnishing Prescription Drugs)**

23 18. Respondent's application is subject to denial under sections 480, subdivision (a)(3),
24 4301, subdivision (o), 4059 and / or 4060 in that Respondent possessed and / or furnished
25 dangerous drugs, without a valid prescription. Complainant refers to and by this reference
26 incorporates the allegations set forth above in paragraph 16, as though set forth fully herein.

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FIFTH CAUSE FOR DENIAL OF APPLICATION

(Acts Involving Dishonesty, Fraud, or Deceit)

19. Respondent's application is subject to denial under sections 480, subdivision (a)(2), in that Respondent committed acts involving dishonesty, fraud, or deceit with the intent to substantially benefit herself and / or substantially injure another. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 15, 16e and 17, as though set forth fully herein.

SIXTH CAUSE FOR DENIAL OF APPLICATION

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

20. Respondent's application is subject to denial under sections 480, subdivision (a)(3) and section 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 15 – 17, inclusive, as though set forth fully herein.

SEVENTH CAUSE FOR DENIAL OF APPLICATION

(Acts Warranting Denial of Licensure)

21. Respondent's application is subject to denial under section 480, subdivisions (a)(3)(A) and (a)(3)(B), in that Respondent committed acts which if done by a licentiate of the business and profession in question would be grounds for discipline of her license. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 15 – 17, inclusive, as though set forth fully herein.

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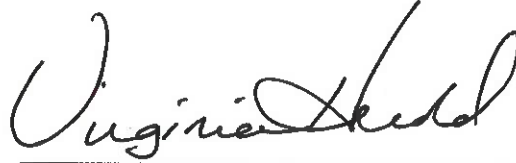
PRAYER

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

DATED: _____

11/14/18



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

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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 Amended Statement of
Issues Against:

Case No. 6006

12 **STACEY CHARESSE SILVA**

AMENDED STATEMENT OF ISSUES

13 Pharmacy Technician Registration Applicant

14 Respondent.
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18

19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Amended Statement of Issues solely in her
22 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
23 Affairs (Board).

24 2. On or about March 28, 2016, the Board received an application for a Pharmacy
25 Technician Registration from Stacey Charesse Silva (Respondent). On or about March 25, 2016,
26 Stacey Charesse Silva certified under penalty of perjury to the truthfulness of all statements,
27 answers, and representations in the application. The Board denied the application on
28 September 2, 2016.

1 **JURISDICTION**

2 3. This Amended 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
6 **STATUTORY PROVISIONS**

7 4. Section 480 states:

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

10

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

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

16 “(b) Notwithstanding any other provision of this code, a person shall not be denied a
17 license solely on the basis that he or she has been convicted of a felony if he or she has obtained a
18 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
19 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
20 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
21 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
22 Section 482.

23 “(c) Notwithstanding any other provisions of this code, a person shall not be denied a
24 license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4,
25 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been
26 dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof
27 of the dismissal.

28 “(d) A board may deny a license regulated by this code on the ground that the applicant

1 knowingly made a false statement of fact that is required to be revealed in the application for the
2 license.”

3 5. Section 492 states:

4 "Notwithstanding any other provision of law, successful completion of any diversion
5 program under the Penal Code, or successful completion of an alcohol and drug problem
6 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
7 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
8 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
9 division, from taking disciplinary action against a licensee or from denying a license for
10 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
11 record pertaining to an arrest.

12 "This section shall not be construed to apply to any drug diversion program operated by any
13 agency established under Division 2 (commencing with Section 500) of this code, or any
14 initiative act referred to in that division."

15 6. Section 4059 provides that a person may not furnish any dangerous drug, except
16 pursuant to a valid prescription.

17 7. Section 4060 states:

18 "No person shall possess any controlled substance, except that furnished to a person upon
19 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
20 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse
21 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
22 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
23 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
24 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
25 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
26 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
27 nurse midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
28 labeled with the name and address of the supplier or producer.

1 Nothing in this section authorizes a certified nurse midwife, a nurse practitioner, a
2 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
3 devices.”

4 8. Section 4300, subdivision (a), states that “[e]very license issued may be suspended or
5 revoked.”

6 9. Section 4300.1 states:

7 “The expiration, cancellation, forfeiture, or suspension of a board-issued license by
8 operation of law or by order or decision of the board or a court of law, the placement of a license
9 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
10 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
11 proceeding against, the licensee or to render a decision suspending or revoking the license.”

12 10. Section 4301 states, in pertinent part:

13 “The board shall take action against any holder of a license who is guilty of unprofessional
14 conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is
15 not limited to, any of the following:

16 ...

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

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

22 ...

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

25 ...

26 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
27 violation of or conspiring to violate any provision or term of this chapter or of the applicable
28 federal and state laws and regulations governing pharmacy, including regulations established by

1 the board or by any other state or federal regulatory agency. . . .”

2
3 **REGULATORY PROVISION**

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

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

11
12 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

13 12. Adderall, brand name of dextroamphetamine/amphetamine, is a Schedule II
14 controlled substance pursuant to Health and Safety Code section 11055(d)(1), and a dangerous
15 drug pursuant to section 4022.

16 13. Marijuana is a Schedule I controlled substance under State and federal law (Health &
17 Saf. Code § 11054 subd. (d)(13); and 21 U.S.C. § 812.), and a dangerous drug pursuant to section
18 4022

19 14. Methamphetamine is a Schedule II controlled substance pursuant to Health and
20 Safety Code section 11055(d)(2), and a dangerous drug pursuant to section 4022.

21 15. Alprazolam is a Schedule IV controlled substance pursuant to Health and Safety Code
22 section 11057(d)(1), and a dangerous drug pursuant to section 4022.

23
24 **FIRST CAUSE FOR DENIAL OF APPLICATION**

25 **(Violating Law Regulating Controlled Substances / Dangerous Drugs)**

26 15. Respondent's application is subject to denial under sections 480, subdivision (a)(3),
27 and 4301, subdivision (j), on the grounds of unprofessional conduct, in that Respondent violated
28 state law regulating controlled substances and dangerous drugs. The crimes or acts are

1 substantially related to the qualifications, functions, or duties of a registered pharmacy technician,
2 California Code of Regulations, title 16, section 1770. The circumstances are as follows:

3 a. On or about September 16, 2010, Respondent admitted to police officers and was
4 found to be in possession of marijuana for her own use, and methamphetamine in a smoking pipe
5 belonging to another. Respondent informed the officer that the last time she smoked
6 methamphetamine was last February, and she only smoked it three times. Subsequently, on or
7 about August 22, 2011, in the criminal proceeding entitled *The People of the State of California v.*
8 *Stacey Charesse Silva* (Super. Ct. L.A. County, No. 0GN05168), the Court ordered Respondent to
9 complete 45 Narcotic's Anonymous meetings and write a two-page essay. On or about
10 December 23, 2011, after completing the Court's order, the matter was dismissed pursuant to
11 Penal Code section 1385 "in the interest of justice."

12 b. On or about November 3, 2012, Respondent directed police officers to her purse
13 where she was found to be in possession of 0.29gg of methamphetamine, a crushed Adderall pill,
14 that she was to give to her ADHD brother.

15 c. On or about April 24, 2013, Respondent admitted to police officers that the one
16 identified Adderall pill, of which she was in possession, was obtained to give to her brother, and
17 that she had used methamphetamine earlier in the day.

18 d. On or about April 9, 2014, Respondent was found to be in possession of 0.85gg of
19 methamphetamine stored in her bra.

20 e. On or about December 23, 2017, Glendale Police Officers found Respondent asleep
21 in her vehicle next to a smoking pipe in plain view. Upon lawful search, officers identified dozens
22 of "small empty plastic bags" consistent with narcotics packaging, a small plastic bag containing
23 two small round white pills marked "Mylan 4" (Alprazolam), plastic bags containing an off white
24 crystal substance resembling methamphetamine and digital scales commonly used in the sales of
25 narcotics. Officers also found four (4) Visa gift cards which had been re-encoded with different
26 account numbers to allow for fraudulent use."

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SECOND CAUSE FOR DENIAL OF APPLICATION

(Violating Pharmacy Law)

16. Respondent's application is subject to denial under sections 480, subdivision (a)(3), and 4301, subdivision (o), on the grounds of unprofessional conduct, for violating sections 4059 and / or 4060, in that on or about September 16, 2010, November 3, 2012, April 24, 2013, and / or April 9, 2014, Respondent violated Pharmacy law when she was in possession of marijuana, Adderall, and / or methamphetamine, controlled substances and dangerous drugs, without valid prescriptions. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 15, inclusive, as though set forth fully.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Misrepresentation in License Application)

17. Respondent's application is subject to denial under sections 480, subdivisions (a)(3) and (c), and sections 4301, subdivision (g), on the grounds of unprofessional conduct, in that on or about March 25, 2016, Respondent knowingly made a false statement of fact required to be revealed in her application for licensure by certifying under penalty of perjury to accuracy of all statements in the application and answering "No" to question No. 2, "Have you previously engaged in the illegal use of controlled substances?" Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 15 – 16, inclusive, as though set forth fully.

FOURTH CAUSE FOR DENIAL OF APPLICATION

(Acts Involving Dishonesty, Fraud, or Deceit)

18. Respondent's application is subject to denial under section 480, (a)(2), in that Respondent committed acts involving dishonesty, fraud, or deceit with the intent to substantially benefit herself and / or substantially injure another. Complainant refers to and by this reference incorporates the allegations set forth above in paragraphs 15 – 17, inclusive, as though set forth fully.

1 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

2 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

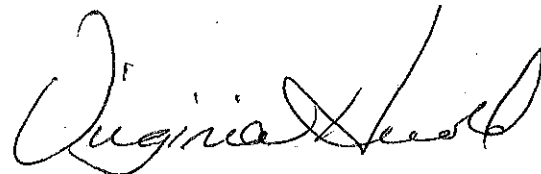
3 19. Respondent's application is subject to denial under sections 480, subdivisions (a)(3)
4 and (c), and sections 4301, subdivision(f), on the grounds of unprofessional conduct, in that
5 Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.
6 Complainant refers to and by this reference incorporates the allegations set forth above in
7 paragraphs 15 - 17, inclusive, as though set forth fully.

8
9 **PRAYER**

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

- 12 1. Denying the application of Stacey Charesse Silva for a Pharmacy Technician
13 Registration; and
14 2. Taking such other and further action as deemed necessary and proper.

15
16
17 DATED: 5/14/18



18 VIRGINIA HEROLD
19 Executive Officer
20 Board of Pharmacy
21 Department of Consumer Affairs
22 State of California
23 *Complainant*

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7

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:
12 **STACEY CHARESSE SILVA**
13 Pharmacy Technician Registration Applicant
14 Respondent.
15

Case No. 6006

16 **STATEMENT OF ISSUES**

17
18
19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
22 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
23 Affairs (Board).

24 2. On or about March 28, 2016, the Board received an application for a Pharmacy
25 Technician Registration from Stacey Charesse Silva (Respondent). On or about March 25, 2016,
26 Stacey Charesse Silva certified under penalty of perjury to the truthfulness of all statements,
27 answers, and representations in the application. The Board denied the application on
28 September 2, 2016.

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 states:

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

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

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

15 “(b) Notwithstanding any other provision of this code, a person shall not be denied a
16 license solely on the basis that he or she has been convicted of a felony if he or she has obtained a
17 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
18 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
19 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
20 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
21 Section 482.

22 “(c) Notwithstanding any other provisions of this code, a person shall not be denied a
23 license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4,
24 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been
25 dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof
26 of the dismissal.

27 “(d) A board may deny a license regulated by this code on the ground that the applicant
28 knowingly made a false statement of fact that is required to be revealed in the application for the

1 license.”

2 5. Section 492 states:

3 "Notwithstanding any other provision of law, successful completion of any diversion
4 program under the Penal Code, or successful completion of an alcohol and drug problem
5 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
6 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
7 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
8 division, from taking disciplinary action against a licensee or from denying a license for
9 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
10 record pertaining to an arrest.

11 "This section shall not be construed to apply to any drug diversion program operated by any
12 agency established under Division 2 (commencing with Section 500) of this code, or any
13 initiative act referred to in that division."

14 6. Section 4059 provides that a person may not furnish any dangerous drug, except
15 pursuant to a valid prescription.

16 7. Section 4060 states:

17 "No person shall possess any controlled substance, except that furnished to a person upon
18 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
19 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse
20 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
21 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
22 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
23 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
24 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
25 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
26 nurse midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
27 labeled with the name and address of the supplier or producer.

28 "Nothing in this section authorizes a certified nurse midwife, a nurse practitioner, a

1 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs
2 and devices."8. Section 4300, subdivision (a), states that "[e]very license issued may be
3 suspended or revoked."

4 9. Section 4300.1 states:

5 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
6 operation of law or by order or decision of the board or a court of law, the placement of a license
7 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
8 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
9 proceeding against, the licensee or to render a decision suspending or revoking the license."

10 10. 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 issued by mistake. Unprofessional conduct shall include, but is
13 not limited to, any of the following:

14

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.

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

20

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

23

24 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
25 violation of or conspiring to violate any provision or term of this chapter or of the applicable
26 federal and state laws and regulations governing pharmacy, including regulations established by
27 the board or by any other state or federal regulatory agency. . . ."

28 ///

1 **REGULATORY PROVISION**

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

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

9 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

10 12. Adderall, brand name of dextroamphetamine/amphetamine, is a Schedule II
11 controlled substance pursuant to Health and Safety Code section 11055(d)(1), and a dangerous
12 drug pursuant to section 4022.

13 13. Marijuana is a Schedule I controlled substance under State and federal law (Health &
14 Saf. Code § 11054 subd. (d)(13); and 21 U.S.C. § 812.), and a dangerous drug pursuant to section
15 4022

16 14. Methamphetamine is a Schedule II controlled substance pursuant to Health and
17 Safety Code section 11055(d)(2), and a dangerous drug pursuant to section 4022.

18 **FIRST CAUSE FOR DENIAL OF APPLICATION**

19 **(Violating Law Regulating Controlled Substances / Dangerous Drugs)**

20 15. Respondent's application is subject to denial under sections 480, subdivision (a)(3),
21 and 4301, subdivision (j), on the grounds of unprofessional conduct, in that Respondent violated
22 state law regulating controlled substances and dangerous drugs. The crimes or acts are
23 substantially related to the qualifications, functions, or duties of a registered pharmacy technician,
24 California Code of Regulations, title 16, section 1770. The circumstances are as follows:

25 a. On or about September 16, 2010, Respondent admitted to police officers and was
26 found to be in possession of marijuana for her own use, and methamphetamine in a smoking pipe
27 belonging to another. Respondent informed the officer that the last time she smoked
28 methamphetamine was last February, and she only smoked it three times. Subsequently, on or

1 about August 22, 2011, in the criminal proceeding entitled *The People of the State of California v.*
2 *Stacey Charesse Silva* (Super. Ct. L.A. County, No. 0GN05168), the Court ordered Respondent to
3 complete 45 Narcotic's Anonymous meetings and write a two-page essay. On or about
4 December 23, 2011, after completing the Court's order, the matter was dismissed pursuant to
5 Penal Code section 1385 "in the interest of justice."

6 b. On or about November 3, 2012, Respondent directed police officers to her purse
7 where she was found to be in possession of 0.29gg of methamphetamine, a crushed Adderall pill,
8 that she was to give to her ADHD brother.

9 c. On or about April 24, 2013, Respondent admitted to police officers that the one
10 identified Adderall pill, of which she was in possession, was obtained to give to her brother, and
11 that she had used methamphetamine earlier in the day.

12 d. On or about April 9, 2014, Respondent admitted to police officers and was found to
13 be in possession of 0.85gg of methamphetamine stored in her bra.

14 **SECOND CAUSE FOR DENIAL OF APPLICATION**

15 **(Violating Pharmacy Law)**

16 16. Respondent's application is subject to denial under sections 480, subdivision (a)(3),
17 and 4301, subdivision (o), on the grounds of unprofessional conduct, for violating sections 4059
18 and / or 4060, in that on or about September 16, 2010, November 3, 2012, April 24, 2013, and / or
19 April 9, 2014, Respondent violated Pharmacy law when she was in possession of marijuana,
20 Adderall, and / or methamphetamine, controlled substances and dangerous drugs, without valid
21 prescriptions. Complainant refers to and by this reference incorporates the allegations set forth
22 above in paragraph 15, inclusive, as though set forth fully.

23 **THIRD CAUSE FOR DENIAL OF APPLICATION**

24 **(Misrepresentation in License Application)**

25 17. Respondent's application is subject to denial under sections 480, subdivisions (a)(3)
26 and (c), and sections 4301, subdivision (g), on the grounds of unprofessional conduct, in that on
27 or about March 25, 2016, Respondent knowingly made a false statement of fact required to be
28 revealed in her application for licensure by certifying under penalty of perjury to accuracy of all

1 statements in the application and answering "No" to question No. 2, "Have you previously
2 engaged in the illegal use of controlled substances?" Complainant refers to and by this reference
3 incorporates the allegations set forth above in paragraphs 15 and 16, inclusive, as though set forth
4 fully.

5 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

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

7 18. Respondent's application is subject to denial under section 480, (a)(2), in that
8 Respondent committed acts involving dishonesty, fraud, or deceit with the intent to substantially
9 benefit herself and / or substantially injure another. Complainant refers to and by this reference
10 incorporates the allegations set forth above in paragraphs 17, inclusive, as though set forth fully.

11 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

12 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

13 19. Respondent's application is subject to denial under sections 480, subdivisions (a)(3)
14 and (c), and sections 4301, subdivision(f), on the grounds of unprofessional conduct, in that
15 Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.
16 Complainant refers to and by this reference incorporates the allegations set forth above in
17 paragraphs 15 - 18, inclusive, as though set forth fully.

18 **PRAYER**

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

21 1. Denying the application of Stacey Charesse Silva for a Pharmacy Technician
22 Registration; and

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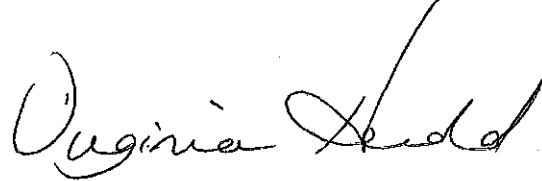
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2. Taking such other and further action as deemed necessary and proper.

DATED: _____

9/22/17



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

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