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

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

Case No. 6077

13 **BRYCE A. DAVIS**

**FIRST AMENDED STATEMENT OF
ISSUES**

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

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about August 23, 2016, the Board received an application for a Pharmacy
24 Technician Registration from Bryce A. Davis (Respondent). On or about August 15, 2016, Bryce
25 A. Davis certified under penalty of perjury to the truthfulness of all statements, answers, and
26 representations in the application. The Board denied the application on February 10, 2017.

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1 **JURISDICTION**

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

5 4. Section 4300, subdivision (c) of the Code provides, in pertinent part, that the Board
6 may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole
7 discretion, issue a probationary license to any applicant for a license who is guilty of
8 unprofessional conduct and who has met all other requirements for licensure.

9 **STATUTORY PROVISIONS**

10 5. Section 475 of the Code states:

11 (a) Notwithstanding any other provisions of this code, the provisions of this
12 division shall govern the denial of licenses on the grounds of:

13 (1) Knowingly making a false statement of material fact, or knowingly
14 omitting to state a material fact, in an application for a license.

15 (2) Conviction of a crime.

16 (3) Commission of any act involving dishonesty, fraud or deceit with the
17 intent to substantially benefit himself or another, or substantially injure another.

18 (4) Commission of any act which, if done by a licentiate of the business or
19 profession in question, would be grounds for suspension or revocation of license.

20 (b) Notwithstanding any other provisions of this code, the provisions of this
21 division shall govern the suspension and revocation of licenses on grounds specified in
22 paragraphs (1) and (2) of subdivision (a).

23 (c) A license shall not be denied, suspended, or revoked on the grounds of a lack
24 of good moral character or any similar ground relating to an applicant's character,
25 reputation, personality, or habits.

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
28 applicant has one of the following:

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

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

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

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

8 (b) Notwithstanding any other provision of this code, a person shall not be denied
9 a license solely on the basis that he or she has been convicted of a felony if he or she
10 has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section
11 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of
12 a misdemeanor if he or she has met all applicable requirements of the criteria of
13 rehabilitation developed by the board to evaluate the rehabilitation of a person when
14 considering the denial of a license under subdivision (a) of Section 482.

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

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

23 7. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by a
25 board within the department pursuant to law to deny an application for a license or to
26 suspend or revoke a license or otherwise take disciplinary action against a person who
27 holds a license, upon the ground that the applicant or the licensee has been convicted
28 of a crime substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be conclusive evidence
of the fact that the conviction occurred, but only of that fact, and the board may inquire
into the circumstances surrounding the commission of the crime in order to fix the
degree of discipline or to determine if the conviction is substantially related to the
qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority,"
and "registration."

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

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(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.

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(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 (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 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. 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 dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made 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 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. . .

REGULATORY PROVISIONS

9. California Code of Regulations, title 16, section 1769 states:

...

(b) When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

- (1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant. . .

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

1 functions authorized by his license or registration in a manner consistent with the public
2 health, safety, or welfare.

3 **FIRST CAUSE FOR DENIAL OF APPLICATION**

4 **(December 13, 2016 Criminal Conviction for Cultivating Marijuana on May 18, 2015)**

5 11. Respondent's application for licensure is subject to denial under section 480,
6 subdivisions (a)(1) and (a)(3)(A) of the Code in that he was convicted of a crime that is
7 substantially related to the qualifications, duties, and functions of a registered pharmacy
8 technician. Said conviction would be grounds for discipline under section 4301, subdivision (l) of
9 the Code for a registered pharmacy technician. The circumstances are as follows:

10 a. On December 13, 2016, in a criminal proceeding entitled, *People of the State of*
11 *California v. Bryce Anthony Davis*, in Riverside County Superior Court, case number
12 BAF1500799, Respondent was convicted on his plea of guilty of violating Health and Safety
13 Code section 11358, cultivating marijuana, a felony which the court agreed to reduce to a
14 misdemeanor pursuant to Proposition 64.¹

15 b. As a result of the conviction, Respondent was ordered to serve two days in
16 county jail with pre-custody credit for two days for time served, and to pay fines and fees in the
17 amount of \$220.

18 c. The facts that led to the conviction are that on May 18, 2015, deputies with the
19 Riverside County Sheriff's Department (RCSD), Southwest Corridor Narcotics Task Force,
20 served a narcotics related search warrant in Hemet, California. During the search warrant, RCSD
21 deputies made contact with Respondent and a co-defendant inside the target residence. RCSD
22 deputies located 85 live marijuana plants in a bedroom that was converted into a grow room, and
23 several large green houses on the property containing live marijuana plants. During a search of
24 Respondent's bedroom, the RCSD deputies located approximately 33 grams of honey oil, three

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26 _____
27 ¹ California Proposition 64, also referred to as "the Adult Use of Marijuana Act," was on
28 the November 8, 2016 ballot in California as an initiated state statute. Proposition 64 made it
legal for adults aged 21 years or older to use and grow marijuana for personal use beginning
November 9, 2016.

1 plastic baggies containing marijuana weighing approximately 7.2 pounds, honey oil on top of the
2 nightstand, and a digital scale. During the investigation, Respondent claimed to be living at that
3 residence with the agreement that he would grow marijuana plants for an unknown male
4 nicknamed "Old Man," and in return he would receive approximately 15 percent of the total
5 weight of the marijuana as payment. Respondent estimated that he would have received 15
6 pounds of processed marijuana as payment, which he would then sell to a local marijuana
7 dispensary and get paid approximately \$1,500 per pound, totaling \$22,500. Respondent was
8 arrested for cultivating marijuana.

9 **SECOND CAUSE FOR DENIAL OF APPLICATION**

10 **(Violation of State & Federal Statutes Regulating Controlled Substances)**

11 12. Respondent's application for licensure is subject to denial under section 480,
12 subdivision (a)(3)(A) of the Code in that he violated state (Health and Safety Code section 11358)
13 and federal (Title 21, U.S.C., section 841) statutes regulating controlled substances, when he
14 cultivated/manufactured marijuana, as described in paragraph 11 above, and incorporated herein
15 by reference. Said violation would be grounds for discipline under section 4301, subdivision (j) of
16 the Code for a registered pharmacy technician.

17 **THIRD CAUSE FOR DENIAL OF APPLICATION**

18 **(General Unprofessional Conduct)**

19 13. Respondent's application for licensure is subject to denial under section 480,
20 subdivision (a)(3)(A) of the Code for committing acts constituting unprofessional conduct when
21 he illegally cultivated/manufactured marijuana with the intent to sell a percentage of that
22 marijuana for profit, acts that if done by a licensee would be grounds for suspension or revocation
23 of license under section 4301 of the Code.

24 **PRAYER**

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

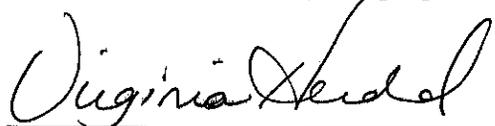
- 27 1. Denying the application of Bryce A. Davis for a Pharmacy Technician Registration;

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

DATED: 7/10/17



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

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11 In the Matter of the Statement of Issues
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13 **BRYCE A. DAVIS**

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 (Board), Department of Consumer
22 Affairs.

23 2. On or about August 23, 2016, the Board received an application for a Pharmacy
24 Technician Registration from Bryce A. Davis (Respondent). On or about August 15, 2016, Bryce
25 A. Davis certified under penalty of perjury to the truthfulness of all statements, answers, and
26 representations in the application. The Board denied the application on February 10, 2017.

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JURISDICTION

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

4. Section 4300, subdivision (c) of the Code provides, in pertinent part, that 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.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

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

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

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

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

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

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

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

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

23 7. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by a
25 board within the department pursuant to law to deny an application for a license or to
26 suspend or revoke a license or otherwise take disciplinary action against a person who
27 holds a license, upon the ground that the applicant or the licensee has been convicted
28 of a crime substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order
to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority,"
and "registration."

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

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(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.

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(1) 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 (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 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. 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 dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made 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 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. . .

REGULATORY PROVISIONS

9. California Code of Regulations, title 16, section 1769 states:

...

(b) When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant. . .

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

1 functions authorized by his license or registration in a manner consistent with the
2 public health, safety, or welfare.

3 **FIRST CAUSE FOR DENIAL OF APPLICATION**

4 **(December 13, 2016 Criminal Conviction for Cultivating Marijuana on May 18, 2015)**

5 11. Respondent's application for licensure is subject to denial under section 480,
6 subdivisions (a)(1) and (a)(3)(A) of the Code in that he was convicted of a crime that is
7 substantially related to the qualifications, duties, and functions of a registered pharmacy
8 technician. Said conviction would be grounds for discipline under section 4301, subdivision (l) of
9 the Code for a registered pharmacy technician. The circumstances are as follows:

10 a. On December 13, 2016, in a criminal proceeding entitled, *People of the State of*
11 *California v. Bryce Anthony Davis*, in Riverside County Superior Court, case number
12 BAF1500799, Respondent was convicted on his plea of guilty of violating Health and Safety
13 Code section 11358, cultivating marijuana, a felony which the court agreed to reduce to a
14 misdemeanor pursuant to Proposition 64.¹

15 b. As a result of the conviction, Respondent was ordered to serve two days in
16 county jail with pre-custody credit for two days for time served, and to pay fines and fees in the
17 amount of \$220.

18 c. The facts that led to the conviction are that on May 18, 2015, deputies with the
19 Riverside County Sheriff's Department (RCSD), Southwest Corridor Narcotics Task Force,
20 served a narcotics related search warrant in Hemet, California. During the search warrant, RCSD
21 deputies made contact with Respondent and a co-defendant inside the target residence. RCSD
22 deputies located 85 live marijuana plants in a bedroom that was converted into a grow room, and
23 several large green houses on the property containing live marijuana plants. During a search of
24 Respondent's bedroom, the RCSD deputies located approximately 33 grams of honey oil, three
25 ///

26 ¹ California Proposition 64, also referred to as "the Adult Use of Marijuana Act," was on
27 the November 8, 2016 ballot in California as an initiated state statute. Proposition 64 made it
28 legal for adults aged 21 years or older to use and grow marijuana for personal use beginning
November 9, 2016.

1 plastic baggies containing marijuana weighing approximately 7.2 pounds, honey oil on top of the
2 nightstand, and a digital scale. During the investigation, Respondent claimed to be living at that
3 residence with the agreement that he would grow marijuana plants for an unknown male
4 nicknamed "Old Man," and in return he would receive approximately 15 percent of the total
5 weight of the marijuana as payment, which he would then sell to a local marijuana dispensary.
6 Respondent was arrested for cultivating marijuana.

7 **SECOND CAUSE FOR DENIAL OF APPLICATION**

8 **(Violation of State Statute Regulating Controlled Substances)**

9 12. Respondent's application for licensure is subject to denial under section 480,
10 subdivision (a)(3)(A) of the Code in that he violated a state statute regulating controlled
11 substances. On May 18, 2015, Respondent was arrested for cultivating marijuana, a violation of
12 Health and Safety Code, section 11358, as described in paragraph 11 above, and incorporated
13 herein by reference. Said violation would be grounds for discipline under section 4301,
14 subdivision (j) of the Code for a registered pharmacy technician.

15 **PRAYER**

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

- 18 1. Denying the application of Bryce A. Davis for a Pharmacy Technician Registration;
19 2. Taking such other and further action as deemed necessary and proper.

20
21 DATED: _____

5/8/17



22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant

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