

1 XAVIER BECERRA  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 GEOFFREY S. ALLEN  
Deputy Attorney General  
4 State Bar No. 193338  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 879-0004  
Facsimile: (510) 622-2270  
7 *Attorneys for Complainant*

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 **JESSICA AUTUMN FORTNER**  
13 **Pharmacy Technician Application**  
14 **Applicant**  
15 Respondent.

Case No. 6108

**STATEMENT OF ISSUES**

17 Complainant alleges:

18 PARTIES

- 19 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official  
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
21 2. On or about August 12, 2016, the Board of Pharmacy, Department of Consumer  
22 Affairs received an application for a Pharmacy Technician Application from Jessica Autumn  
23 Fortner (Respondent). On or about August 10, 2016, Jessica Autumn Fortner certified under  
24 penalty of perjury to the truthfulness of all statements, answers, and representations in the  
25 application. The Board denied the application on March 17, 2017.

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STATUTORY PROVISIONS

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

4. Section 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.

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

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

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

....

5. Section 4300 of the Code states:

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

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

1           "(3) Suspending his or her right to practice for a period not exceeding one year.

2           "(4) Revoking his or her license.

3           "(5) Taking any other action in relation to disciplining him or her as the board in its  
4 discretion may deem proper.

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

10           "(1) Medical or psychiatric evaluation.

11           "(2) Continuing medical or psychiatric treatment.

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

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

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

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

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

17           "(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary  
18 certificate of licensure for any violation of the terms and conditions of probation. Upon  
19 satisfactory completion of probation, the board shall convert the probationary certificate to a  
20 regular certificate, free of conditions.

21           "(e) The proceedings under this article shall be conducted in accordance with Chapter 5  
22 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board  
23 shall have all the powers granted therein. The action shall be final, except that the propriety of  
24 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of  
25 Civil Procedure."

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1           6.     Section 4301 of the Code states:

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

5           . . .

6           “(h) The administering to oneself, of any controlled substance, or the use of any dangerous  
7 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
8 oneself, to a person holding a license under this chapter, or to any other person or to the public, or  
9 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
10 practice authorized by the license.

11          . . .

12          “(k) The conviction of more than one misdemeanor or any felony involving the use,  
13 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any  
14 combination of those substances.

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

1 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
2 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
3 indictment.”

4 . . . .

5 FIRST CAUSE FOR DENIAL OF APPLICATION

6 (Criminal Conviction)

7 7. Respondent has subjected her Application to denial in that Respondent has been  
8 convicted of a crime substantially related to qualifications, functions, and duties of pharmacy  
9 technician. (Bus. & Prof. Code, §§ 480, subds. (a)(1) and (a)(3), 4301, subds. (k) and (l).) The  
10 circumstances are as follows:

11 8. On or about June 16, 2014, in a criminal proceeding entitled *The People of the State*  
12 *of California v. Jessica Autumn Fortner* in Humboldt Superior Court, Case Number CR1301249,  
13 Respondent was convicted by plea of nolo contendere of violating Vehicle Code 23103 (reckless  
14 driving involving the consumption of alcohol and a drug), a misdemeanor. Respondent was  
15 sentenced to three years probation and fined and ordered to complete a 90-day alcohol program.  
16 The conviction was based upon an incident occurring on October 5, 2012. Respondent was  
17 observed driving a motor vehicle in an erratic fashion. Officers from the Eureka Police  
18 Department responded and performed a traffic stop upon Respondent. Respondent's speech was  
19 slurred, her eyes were watery and bloodshot, and the officer detected the odor of alcohol coming  
20 from her breath. Respondent admitted to consuming alcohol. Respondent was asked to complete  
21 several field sobriety tests. Respondent failed to complete the test. Respondent was arrested for  
22 driving under the influence. (Veh. Code, § 23152, subd. (a).) The officers conducted a search of  
23 Respondent's vehicle and discovered two commercial whip cream dispensers and approximately  
24 40 used nitrous oxide canisters along with receipt dated October 5, 2012, for the purchase of four  
25 boxes of nitrous oxide canisters. Respondent admitted to consuming nitrous oxide for recreation.  
26 The results of Respondent's toxicology test indicated Respondent's blood alcohol content to be  
27 0.07% and positive for marijuana.

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