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

14 In the Matter of the Statement of Issues
Against:

Case No. 6892

15 **NICOLE LEE PATTON, AKA NICOLE**
16 **DENDY, AKA NICOLE TORRES**

STATEMENT OF ISSUES

17 **Pharmacy Technician Registration**
18 **Applicant**

Respondent.

19
20 **PARTIES**

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

23 2. On or about May 20, 2019, the Board of Pharmacy, Department of Consumer Affairs
24 received an application for a Pharmacy Technician Registration from Nicole Lee Patton, aka
25 Nicole Dendy, aka Nicole Torres (Respondent). On or about May 15, 2019, Nicole Lee Patton
26 certified under penalty of perjury to the truthfulness of all statements, answers, and
27 representations in the application. The Board denied the application on November 18, 2019.

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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 (Code) unless otherwise indicated.

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

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

7 ...

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

14 (1) Medical or psychiatric evaluation.

15 (2) Continuing medical or psychiatric treatment.

16 (3) Restriction of type or circumstances of practice.

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

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

19 (6) Random fluid testing for alcohol or drugs.

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

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22 **STATUTORY PROVISIONS**

23 5. Section 475 of the Code states:

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

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

28 (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.

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

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

7 6. Section 480 of the Code states:

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

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

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

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

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

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

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

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

(e) This section shall become inoperative on July 1, 2020, and, as of January 1,
2021, is repealed.

7. Section 481 of the Code states:

Each board under the provisions of this code shall develop criteria to aid it,
when considering the denial, suspension or revocation of a license, to determine

1 whether a crime or act is substantially related to the qualifications, functions, or
2 duties of the business or profession it regulates.

3 (b) This section shall become inoperative on July 1, 2020, and, as of January 1,
4 2021, is repealed.

5 8. Section 482 of the Code states:

6 (a) Each board under the provisions of this code shall develop criteria to
7 evaluate the rehabilitation of a person when:

8 (1) Considering the denial of a license by the board under Section 480; or

9 (2) Considering suspension or revocation of a license under Section 490.

10 (b) Each board shall take into account all competent evidence of rehabilitation
11 furnished by the applicant or licensee.

12 (c) This section shall become inoperative on July 1, 2020, and, as of January 1,
13 2021, is repealed.

14 9. Section 490 of the Code provides, in pertinent part, that a board may suspend or
15 revoke a license on the ground that the licensee has been convicted of a crime substantially
16 related to the qualifications, functions, or duties of the business or profession for which the
17 license was issued.

18 10. Section 493 of the Code states:

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

(b) As used in this section, “license” includes “certificate,” “permit,”
“authority,” and “registration.”

(c) This section shall become inoperative on July 1, 2020, and, as of January 1,
2021, is repealed.

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

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:

1 (a) Procurement of a license by fraud or misrepresentation.

2 ...

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

6 ...

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

12 (i) Except as otherwise authorized by law, knowingly selling, furnishing, giving
13 away, or administering, or offering to sell, furnish, give away, or administer, any
14 controlled substance to an addict.

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

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

20 (l) The conviction of a crime substantially related to the qualifications,
21 functions, and duties of a licensee under this chapter. The record of conviction of a
22 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
23 States Code regulating controlled substances or of a violation of the statutes of this
24 state regulating controlled substances or dangerous drugs shall be conclusive
25 evidence of unprofessional conduct. In all other cases, the record of conviction shall
26 be conclusive evidence only of the fact that the conviction occurred. The board may
27 inquire into the circumstances surrounding the commission of the crime, in order to
28 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.

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1 **REGULATORY PROVISIONS**

2 12. California Code of Regulations, title 16, section 1769 states, in pertinent part:

3 ...

4 (b) When considering the denial of a facility or personal license under Section
5 480 of the Business and Professions Code, the board, in evaluating the rehabilitation
6 of the applicant and his present eligibility for licensing or registration, will consider
7 the following criteria:

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

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

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

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

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

18 13. California Code of Regulations, title 16, section 1770, states:

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

26 **FIRST CAUSE FOR DENIAL OF APPLICATION**

27 (March 29, 2016 Conviction – DUI)

28 14. Respondent's application is subject to denial under Code section 480 in that on or
about March 29, 2016, in a criminal proceeding entitled *People of the State of California v.*
Nicole Patton in Orange County Superior Court, Case Number 16HM02113 M A, Respondent
was convicted on her plea of guilty of a misdemeanor violation of Vehicle Code section 23152(a),
and her admission of an enhancement under Vehicle Code section 23578. As a result of the
conviction, Respondent was placed on summary probation for 3 years. Respondent was ordered
to, among other things, complete 80 hours of community service and complete a six-month First
Offender Alcohol program.

1 15. The circumstances surrounding the offense are that on January 31, 2016, Respondent
2 drove her vehicle off the roadway and over the adjacent raised curb, damaging both right side
3 tires and rims of her vehicle. Respondent left her vehicle and was brought back to the scene of
4 the collision by a deputy with the Orange County Sheriff’s Department. Respondent displayed
5 objective signs of alcohol intoxication and was arrested. Samples of Respondent’s breath
6 following her arrest revealed she had a blood alcohol content of .15%.

7 **SECOND CAUSE FOR DENIAL OF APPLICATION**

8 (November 22, 2017 Conviction – Possession of Drug Paraphernalia)

9 16. Respondent's application is subject to denial under Code section 480 in that on or
10 about November 22, 2017, in a criminal proceeding entitled *People of the State of California v.*
11 *Nicole Patton* in Orange County Superior Court, Case Number 17HM10721 M A, Respondent
12 was convicted on her plea of guilty of a misdemeanor violation of Health and Safety Code section
13 11364(a). As a result of the conviction, Respondent was ordered to, among other things, serve 30
14 days in the Orange County Jail.

15 17. The circumstances surrounding the offense are that on September 18, 2017,
16 Respondent was contacted by deputies with the Orange County Sheriff’s Department and found
17 to be carrying in her front pocket a clear glass pipe commonly used to smoke methamphetamine.
18 The pipe had burn marks and contained white crystalline residue consistent with
19 methamphetamine. A second methamphetamine pipe was located within the bags Respondent
20 had with her.

21 **THIRD CAUSE FOR DENIAL OF APPLICATION**

22 (November 22, 2017 Conviction - Possession of a Controlled Substance & Paraphernalia)

23 18. Respondent's application is subject to denial under Code section 480 in that on or
24 about November 22, 2017, in a criminal proceeding entitled *People of the State of California v.*
25 *Nicole Patton* in Orange County Superior Court, Case Number 17HM11196 M A, Respondent
26 was convicted on her plea of guilty of misdemeanor violations of Health and Safety Code sections
27 11377(a) and 11364(a). As a result of the conviction, Respondent was ordered to, among other
28 things, serve 30 days in the Orange County Jail.

1 19. The circumstances surrounding the offense are that on November 20, 2017,
2 Respondent was contacted by deputies with the Orange County Sheriff’s Department and found
3 to be carrying in her backpack a clear glass pipe commonly used to smoke methamphetamine.
4 Contained within the end of the pipe was a usable quantity of apparent methamphetamine.

5 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

6 (Unprofessional Conduct – Dangerous Use of Alcohol)

7 20. Respondent’s application is subject to denial under Code section 4301, subdivision
8 (h) in that she used alcohol to the extent and in a manner that was dangerous and injurious to
9 herself or the public, as described in paragraphs 14-15 above, which are herein incorporated by
10 reference.

11 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

12 (Unprofessional Conduct – Violation of Controlled Substances Laws)

13 21. Respondent’s application is subject to denial under Code section 4301, subdivisions
14 (j) and (l) in that she was convicted of violating controlled substance laws as described in
15 paragraphs 16-19 above, which are herein incorporated by reference.

16 **DISCIPLINARY CONSIDERATIONS**

17 22. To determine the degree of discipline, if any, to be imposed on Respondent,
18 Complainant alleges:

19 23. On or about June 3, 2016 Respondent was found in violation of probation in Orange
20 County Superior Court Case Number 16HM02113 M A for failing to enroll in a six-month First
21 Offender Alcohol Program by April 26, 2016. An order to serve 10 days in the Orange County
22 Jail as a result of the violation was stayed pending completion of the Alcohol Program.

23 24. On or about February 24, 2017 Respondent was found in violation of probation in
24 Orange County Superior Court Case Number 16HM02113 M A for failing to complete a six-
25 month First Offender Alcohol Program following her termination from the program on July 21,
26 2016, and for failing to report to the Orange County Jail to serve 6 days, which had been imposed
27 on June 3, 2016. Respondent was ordered to serve 30 days in the Orange County Jail, and
28 probation was ordered terminated.

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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 Nicole Lee Patton, aka Nicole Dendy, aka Nicole Torres for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: February 26, 2020



ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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