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

12 In the Matter of the Statement of Issues Against: Case No. 7144
13 **JANELLE HURTADO**
14 **Pharmacy Technician Registration Applicant** **STATEMENT OF ISSUES**
15 Respondent.
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18 **PARTIES**

19 1. Anne Sodergren (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 October 19, 2020, the Board of Pharmacy (Board), Department of
22 Consumer Affairs received an application for a Pharmacy Technician Registration from Janelle
23 Hurtado (Respondent). On or about October 8, 2020, Respondent certified under penalty of
24 perjury to the truthfulness of all statements, answers, and representations in the application.

25 The Board denied the application on February 18, 2021.

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1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Board under the authority of the
3 following laws. All section references are to the Business and Professions Code (Code) unless
4 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
7 sole 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 480 of the Code provides, in pertinent part:

11 (a) Notwithstanding any other provision of this code, a board may deny a license
12 regulated by this code on the grounds that the applicant has been convicted of a crime or
13 has been subject to formal discipline only if either of the following conditions are met:

14 (1) The applicant has been convicted of a crime within the preceding seven years
15 from the date of application that is substantially related to the qualifications, functions,
16 or duties of the business or profession for which the application is made, regardless of
17 whether the applicant was incarcerated for that crime, or the applicant has been
18 convicted of a crime that is substantially related to the qualifications, functions, or duties
19 of the business or profession for which the application is made and for which the
20 applicant is presently incarcerated or for which the applicant was released from
21 incarceration within the preceding seven years from the date of application

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23 (b) Notwithstanding any other provision of this code, a person shall not be denied a
24 license on the basis that the person has been convicted of a crime, or on the basis of acts
25 underlying a conviction for a crime, if that person has obtained a certificate of
26 rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3
27 of the Penal Code, has been granted clemency or a pardon by a state or federal
28 executive, or has made a showing of rehabilitation pursuant to Section 482.

(c) Notwithstanding any other provision of this code, a person shall not be denied a
license on the basis of any conviction, or on the basis of the acts underlying the
conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a,
1203.41, 1203.42, or 1203.425 of the Penal Code, or a comparable dismissal or
expungement. An applicant who has a conviction that has been dismissed pursuant
to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code shall provide proof
of the dismissal if it is not reflected on the report furnished by the Department of Justice.

1 (d) Notwithstanding any other provision of this code, a board shall not deny a
2 license on the basis of an arrest that resulted in a disposition other than a conviction,
including an arrest that resulted in an infraction, citation, or a juvenile adjudication.

3 (e) A board may deny a license regulated by this code on the ground that the
4 applicant knowingly made a false statement of fact that is required to be revealed in the
5 application for the license. A board shall not deny a license based solely on an
applicant's failure to disclose a fact that would not have been cause for denial of the
license had it been disclosed.

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7 6. Section 493 of the Code provides, in pertinent part:

8 (a) Notwithstanding any other law, in a proceeding conducted by a board
9 within the department pursuant to law to deny an application for a license or to
10 suspend or revoke a license or otherwise take disciplinary action against a person
11 who holds a license, upon the ground that the applicant or the licensee has been
12 convicted 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.

13 (b)(1) Criteria for determining whether a crime is substantially related to the
14 qualifications, functions, or duties of the business or profession the board
regulates shall include all of the following:

15 (A) The nature and gravity of the offense.

16 (B) The number of years elapsed since the date of the offense.

17 (C) The nature and duties of the profession.

18 (2) A board shall not categorically bar an applicant based solely on the type
19 of conviction without considering evidence of rehabilitation.

20 (c) As used in this section, "license" includes "certificate," "permit,"
21 "authority," and "registration."

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23 7. Section 4301 of the Code provides, in pertinent part:

24 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.

25 Unprofessional conduct includes, but is not limited to, any of the following:

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

7 ...

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

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28 REGULATIONS

8. California Code of Regulations (CCR), title 16, section 1769, provides, in
pertinent part:

...

(b) Denial of a license.

(1) When considering the denial of a facility or personal license under Section
480 of the Business and Professions Code on the grounds that the applicant has
been convicted of a crime, the board will consider whether the applicant made a
showing of rehabilitation if the applicant completed the criminal sentence at issue
without a violation of parole or probation. In making this determination, the board
will consider the following criteria:

(A) The nature and gravity of the crime(s).

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(B) The length(s) of the applicable parole or probation period(s).

(C) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.

(D) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.

(E) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

(2) If the applicant has not completed the criminal sentence at issue without a violation of parole or probation, or the board determines that the applicant did not make the showing of rehabilitation based on the criteria in paragraph (1) or the denial is based on professional misconduct, the board will apply the following criteria in evaluating an applicant's rehabilitation:

(A) The nature and gravity of the act(s), professional misconduct, or crime(s) under consideration as grounds for denial.

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

(C) The time that has elapsed since commission of the act(s), professional misconduct, or crime(s) referred to in subparagraph (A) or (B).

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

(E) The criteria in paragraphs (1)(A) through (E), as applicable.

(F) Evidence, if any, of rehabilitation submitted by the applicant, including as provided in the board's Disciplinary Guidelines, identified in section 1760.

...

9. CCR, 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.

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

DATED: 7/1/2021

Signature on File

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