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

12  
13 In the Matter of the Statement of Issues  
Against:  
14 **JESSIE LEON MCGEE, JR.**  
15 Pharmacy Technician Registration Applicant  
16 Respondent.

Case No. 6690

17  
18  
19 **STATEMENT OF ISSUES**

20 **PARTIES**

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

23 2. On or about August 21, 2018, the Board received an application for a Pharmacy  
24 Technician Registration from Jessie Leon McGee, Jr. (Respondent). On or about July 11, 2018,  
25 Jessie Leon McGee, Jr. certified under penalty of perjury to the truthfulness of all statements,  
26 answers, and representations in the application. The Board denied the application on February 8,  
27 2019.

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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 unless otherwise  
4 indicated.

5 4. Section 4300 provides in pertinent part, that every license issued by the Board is  
6 subject to discipline, including suspension or revocation.

7 **STATUTORY PROVISIONS**

8 5. Section 480 states, in pertinent part:

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

11 (1) Been convicted of a crime. A conviction within the meaning of this section  
12 means a plea or verdict of guilty or a conviction following a plea of nolo contendere.  
13 Any action that a board is permitted to take following the establishment of a  
14 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.

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

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

18 (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.

19 (b) Notwithstanding any other provision of this code, a person shall not be  
20 denied a license solely on the basis that he or she has been convicted of a felony if he  
or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing  
21 with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been  
22 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  
23 person when considering the denial of a license under subdivision (a) of Section 482.

24 (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  
25 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  
26 the Penal Code shall provide proof of the dismissal.

27 (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  
28 the application for the license.

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

2 6. Section 490 provides, in pertinent part, that a board may suspend or revoke a license  
3 on the ground that the licensee has been convicted of a crime substantially related to the  
4 qualifications, functions, or duties of the business or profession for which the license was issued.

5 7. Section 4301 states, in pertinent part:

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

8 ....

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

11 .....

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

15 .....

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

18 (l) The conviction of a crime substantially related to the qualifications,  
19 functions, and duties of a licensee under this chapter. The record of conviction of a  
20 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
21 States Code regulating controlled substances or of a violation of the statutes of this  
22 state regulating controlled substances or dangerous drugs shall be conclusive  
23 evidence of unprofessional conduct. In all other cases, the record of conviction shall  
24 be conclusive evidence only of the fact that the conviction occurred. The board may  
25 inquire into the circumstances surrounding the commission of the crime, in order to  
26 fix the degree of discipline or, in the case of a conviction not involving controlled  
27 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.

28 ....

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

6 (p) Actions or conduct that would have warranted denial of a license.

### 7 **REGULATORY PROVISIONS**

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

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

### 16 **CONTROLLED SUBSTANCE**

17 9. “Cocaine, and any cocaine base,” is a narcotic drug according to Health and Safety  
18 Code section 11019, subdivision (e). It is a Schedule I controlled substance, as designated in  
19 Health and Safety Code section 11054, subdivision (f)(1), and a Schedule II controlled substance,  
20 as designated in Health and Safety Code section 11055, subdivision (b)(6). It is categorized as a  
21 dangerous drug according to section 4022.

### 22 **FIRST CAUSE FOR DENIAL OF APPLICATION**

#### 23 **(Convictions of Substantially Related Crimes)**

24 10. Respondent's application is subject to denial under section 480, subdivision (a)(1), in  
25 that Respondent was convicted of substantially related crimes, as follows:

26 a. On or about February 1, 2012, Respondent was convicted of one misdemeanor count  
27 of violating Health and Safety Code section 11364 [possession of controlled substance  
28 paraphernalia] in the criminal proceeding entitled *The People of the State of California v Jessie  
Leon McGee Jr.* (Super. Ct. L.A. County, 2012, No. 2IG00580). The court sentenced Respondent  
to serve 3 days in jail and placed him on 36 months' probation, with terms and conditions. The  
circumstances surrounding the conviction are that on or about January 30, 2012, Inglewood police  
officers observed Respondent and two other males enter and break in a chain link fence towards a  
freeway underpass. The individuals took concealment and were observed smoking from a glass

1 pipe that is typically used to smoke rock cocaine in its base form. Respondent was subsequently  
2 placed under arrest for trespassing. Officers recovered a glass tube and during a search of  
3 Respondent, an off white colored rock like substance was found in his right front jacket pocket.

4 b. On or about December 19, 2007, Respondent was convicted of one misdemeanor  
5 count of violating Penal Code section 12020, subdivision (a) [carry concealed dirk or dagger] in  
6 the criminal proceeding entitled *The People of the State of California v. Jessie Leon McGee*  
7 (Super. Ct. L.A. County, 2007, No. 7WA27375). The court sentenced Respondent to serve 3  
8 days in jail and placed him on 24 months' probation, with terms and conditions.

9 c. On or about November 6, 2007, after pleading nolo contendere, Respondent was  
10 convicted of one misdemeanor count of violating Penal Code section 664-484, subdivision (a)  
11 [attempt to commit petty theft] in the criminal proceeding entitled *The People of the State of*  
12 *California v. Jessie McGee* (Super. Ct. L.A. County, 2007, No. 7IG03582). The court sentenced  
13 Respondent to serve 7 days in jail and placed him on 12 months' probation, with terms and  
14 conditions.

15 d. On or about June 12, 2007, after pleading nolo contendere, Respondent was convicted  
16 of one misdemeanor count of violating Penal Code section 148.98, subdivision (b) [false ID to a  
17 specific peace officer] in the criminal proceeding entitled *The People of the State of California v.*  
18 *Jessie McGee* (Super. Ct. L.A. County, 2007, No. 6WA00428). The court sentenced Respondent  
19 to serve 18 days in jail and placed him on 12 months' probation, with terms and conditions.

## 20 **SECOND CAUSE FOR DENIAL OF APPLICATION**

### 21 **(Knowingly Made a False Statement of Fact)**

22 11. Respondent's application is subject to denial under section 480, subdivision (d), in  
23 that on or about July 11, 2018, Respondent knowingly made a false statement of fact required to  
24 be revealed in his application when he only disclosed his 2017 conviction<sup>1</sup> that was dismissed but  
25 failed to disclose his other prior convictions. Complainant refers to, and by this reference  
26 incorporates, the allegations set forth in paragraph 10, as though set forth fully.

27 <sup>1</sup> *The People of the State of California v. Jessie Leon McGee, Jr.* (Super. Ct. L.A. County,  
28 2017, No. 7AN02918). The case was dismissed upon completion of terms and conditions of the  
veteran's diversion program.

1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 **(Acts Warranting Denial of Licensure)**

3 12. Respondent's application is subject to denial under sections 4301, subdivision (p)  
4 and/or (o), and 480, subdivisions (a)(3)A) and (a)(3)(B), in that Respondent committed acts  
5 which if done by a licentiate of the business and profession in question, would be grounds for  
6 suspension or revocation of his license as follows:

7 a. Respondent was convicted of crimes substantially related to the qualifications,  
8 functions, or duties of a pharmacy technician which to a substantial degree evidence his present  
9 or potential unfitness to perform the functions authorized by his license in a manner consistent  
10 with the public health, safety, or welfare, in violation of sections 4301, subdivision (l), and 490,  
11 in conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,  
12 and by this reference incorporates, the allegations set forth above in paragraph 10, as though set  
13 forth fully.

14 b. Respondent committed acts involving dishonesty, fraud, or deceit, in violation of  
15 section 4301, subdivision (f). Complainant refers to, and by this reference incorporates, the  
16 allegations set forth above in paragraph 10, subparagraphs (c) and (d), as though set forth fully.

17 c. Respondent used alcoholic beverages to an extent or in a manner dangerous or  
18 injurious to himself, any person, or the public, in violation of section 4301, subdivision (h) as  
19 follows: On or about February 12, 2017, a California Highway Patrol officer conducted an  
20 enforcement stop after observing Respondent swerving over the painted line divider. While  
21 speaking to Respondent, the officer observed him to have red watery eyes and could smell the  
22 odor of alcohol. Respondent submitted to a series of field sobriety tests, which he could not  
23 perform as instructed. During the booking procedure, Respondent provided a blood sample that  
24 revealed a blood alcohol content level of 0.10%.

25 d. On or about September 14, 2015, during a traffic enforcement stop, Respondent was  
26 contacted by a Los Angeles County Sheriff's Department deputy. While speaking to Respondent,  
27 the deputy observed a glass cylindrical smoking pipe on the driver's side floorboard. Respondent  
28 admitted to the deputy that the smoking pipe used to smoke rock cocaine belonged him.

1 Respondent was found to be in violation of Health and Safety Code section 11364, subdivision  
2 (a) [possession of a controlled substance paraphernalia] and was placed under arrest.

3 e. Respondent was found to be in possession of controlled substance paraphernalia in  
4 violation of section 4301, subdivisions (j) and (o). Complainant refers to, and by this reference  
5 incorporates, the allegations set forth above in paragraph 10, subparagraph (a) and paragraph 12,  
6 subparagraph (d), as though set forth fully.

7 f. Respondent was found to be in possession of rock cocaine, a controlled substance, in  
8 violation of section 4301, subdivisions (j) and (o). Complainant refers to, and by this reference  
9 incorporates, the allegations set forth above in paragraph 10, subparagraph (a), as though set forth  
10 fully.

11 **PRAYER**

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

- 14 1. Denying the application of Jessie Leon McGee, Jr. for a Pharmacy Technician  
15 Registration; and  
16 2. Taking such other and further action as deemed necessary and proper.

17  
18 DATED: October 3, 2019



19 ANNE SODERGREN  
20 Interim Executive Officer  
21 Board of Pharmacy  
22 Department of Consumer Affairs  
23 State of California  
24 *Complainant*

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