

1 XAVIER BECERRA  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 KAREN L. GORDON  
Deputy Attorney General  
4 State Bar No. 137969  
600 West Broadway, Suite 1800  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 738-9427  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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

12 In the Matter of the Statement of Issues  
Against:

13 **PHILLIP ALEXIS GOMEZ, JR.**  
14 **AKA PHILLIP ALEXIX GOMEZ**

15 **Pharmacy Technician Applicant**

16 Respondent.

Case No. 6820

**STATEMENT OF ISSUES**

17  
18  
19 1. Anne Sodergren (Complainant) brings this Statement of Issues solely in her official  
20 capacity as the Interim Executive Officer of the Board of Pharmacy (Board), Department of  
21 Consumer Affairs.

22 2. On or about November 30, 2018, the Board received an application for a Pharmacy  
23 Technician Registration from Phillip Alexis Gomez, Jr., also known as Phillip Alexix Gomez  
24 (Respondent). On or about November 27, 2018, Respondent certified under penalty of perjury to  
25 the truthfulness of all statements, answers, and representations in the application. The Board  
26 denied the application on August 20, 2019.

27 ///

28 ///

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. Pursuant to Code section 485, subdivision (b), on or about August 20, 2019,  
6 Respondent’s application was denied and he was notified of the right to a hearing to appeal the  
7 denial.

8 5. On or about September 20, 2019, the Board received Respondent’s request for a  
9 hearing to appeal the denial of his application.

10 **STATUTORY PROVISIONS**

11 6. Section 480 of the Code states:

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

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

21 ...

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

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

27 (b) Notwithstanding any other provision of this code, a person shall not be denied  
28 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 with Section  
4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been 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.

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

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

5 7. Section 493 of the Code states:

6 Notwithstanding any other provision of law, in a proceeding conducted by a  
7 board within the department pursuant to law to deny an application for a license or to  
8 suspend or revoke a license or otherwise take disciplinary action against a person who  
9 holds a license, upon the ground that the applicant or the licensee has been convicted  
10 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  
11 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  
12 degree of discipline or to determine if the conviction is substantially related to the  
qualifications, functions, and duties of the licensee in question.

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

15 (c) This section shall become inoperative on July 1, 2020, and, as of January 1,  
16 2021, is repealed.

17 8. Section 4300 of the Code states:

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

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

22 (1) Suspending judgment.

23 (2) Placing him or her upon probation.

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

25 (4) Revoking his or her license.

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

28 (c) 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. The board may issue the license subject to any terms  
or conditions not contrary to public policy, including, but not limited to, the following:

(1) Medical or psychiatric evaluation.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- (2) Continuing medical or psychiatric treatment.
- (3) Restriction of type or circumstances of practice.
- (4) Continuing participation in a board-approved rehabilitation program.
- (5) Abstention from the use of alcohol or drugs.
- (6) Random fluid testing for alcohol or drugs.
- (7) Compliance with laws and regulations governing the practice of pharmacy.

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

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

9. 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:

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

...

(f) The commission of any act involving moral turpitude, dishonesty, fraud, 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.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be 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.

...

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

(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

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

18 ....

### 19 **REGULATORY PROVISIONS**

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

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

### 28 **COST RECOVERY**

11. Code section 125.3 states, in pertinent part, that the Board may request the  
administrative law judge to direct a licentiate found to have committed a violation or violations of  
the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
enforcement of the case.

### **FACTUAL ALLEGATIONS**

#### **2008 Criminal Conviction for Tampering with Vehicle**

12. On or about November 5, 2008, in a criminal proceeding entitled *People of the State  
of California v. Phillip Alexix Gomez, aka Phillip Alexis Gomez*, in San Diego County Superior  
Court, case number S223372, Respondent was convicted on his plea of guilty of tampering with a  
vehicle (Veh. Code section 10852), a misdemeanor. An additional misdemeanor charge of  
attempted petty theft (Pen. Code section 664) was dismissed pursuant to a plea agreement. As a

1 result of the conviction, Respondent was placed on summary probation for 3 years. In addition,  
2 Respondent was required to pay fines and complete community service. On September 21, 2012,  
3 the court dismissed the criminal conviction pursuant to Penal code section 1203.4. In  
4 Respondent's March 11, 2019 statement to the Board, Respondent admitted that he was arrested  
5 for stealing a tire from a parked car without the owner's permission.

6 **2012 Criminal Conviction for Trespassing**

7 13. On or about January 30, 2012, in a criminal proceeding entitled *People of the State of*  
8 *California v. Phillip Alexis Gomez*, in Los Angeles County Superior Court, case number  
9 OPS78927, Respondent was convicted on his plea of nolo contendere of trespassing (Pen. Code  
10 section 602, subd. (o)), a misdemeanor. As a result of the conviction, Respondent was placed on  
11 summary probation for 1 year and ordered to stay away from the subject grocery store.  
12 Respondent was sentenced to serve 18 days in Los Angeles County Jail, with 9 days credited for  
13 time served and 9 days credited for good behavior. The facts that led to this conviction are that  
14 on October 2, 2010, police officers with the Arcadia Police Department responded to a private  
15 citizen's arrest at a local retail establishment where Respondent was being detained by a store  
16 employee. During their investigation, police officers were advised that Respondent was in  
17 violation of a trespassing acknowledgment form dated July 12, 2010, wherein Respondent  
18 acknowledged that he was prohibited from returning to the premises and would be subject to  
19 arrest upon return. Respondent was arrested for violating Pen. Code section 602, subd. (m)  
20 (trespassing on closed lands).

21 **2014 Criminal Conviction for Aiding and Abetting in Exhibition of Speed**

22 14. On or about October 31, 2014, in a criminal proceeding entitled *People of the State of*  
23 *California v. Phillip Gomez*, in Los Angeles County Superior Court, case number 4VY02761,  
24 Respondent was convicted on his plea of nolo contendere to aiding and abetting in exhibition of  
25 speed (Veh. Code section 23109, subd. (c)), a misdemeanor. An additional misdemeanor charge  
26 of driving under the influence of drugs (DUI) (Veh. Code section 23152) was dismissed pursuant  
27 to a plea agreement. As a result of the conviction, Respondent was placed on summary probation  
28 for 2 years. Respondent was required to pay fines or complete community service in lieu of

1 payment, complete a DUI offender program, and attend 102 Alcoholics Anonymous or Narcotics  
2 Anonymous meetings. The facts that led to the conviction are that on July 1, 2014, officers with  
3 the California Highway Patrol initiated a traffic stop after observing Respondent driving  
4 erratically. The officers made contact with Respondent, who admitted to smoking marijuana  
5 earlier in the day, drinking alcohol prior to driving, and consuming prescription cough syrup that  
6 contained Promethazine<sup>1</sup>. Respondent exhibited signs of impairment and was unable to  
7 successfully complete field sobriety tests. Respondent was arrested for DUI (Veh. Code section  
8 23152). A subsequent toxicology report confirmed the presence of tetrahydrocannabinol (THC)<sup>2</sup>  
9 metabolites in Respondent's blood samples.

### 10 **2017 Arrest for DUI**

11 15. On or about June 17, 2017, police officers with the Chula Vista Police Department  
12 were conducting a DUI checkpoint when they heard a vehicle engine revving and saw  
13 Respondent driving towards the checkpoint at an accelerated speed. The police officers initiated  
14 a traffic stop and made contact with Respondent, who was exhibiting symptoms of impairment.  
15 Respondent admitted to drinking alcohol prior to driving and was unable to successfully complete  
16 field sobriety tests. Respondent was arrested for DUI (Veh. Code section 23152, subds. (a) and  
17 (b)). Respondent's blood samples were tested and yielded a blood alcohol concentration (BAC)  
18 of 0.16%.

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

#### 20 **(Criminal Convictions)**

21 16. Respondent has subjected his application to denial under Code section 480,  
22 subdivision (a)(1), in that he was convicted of crimes that are substantially related to the  
23 qualifications, functions, or duties of a pharmacy technician, as set forth above, in paragraphs 12  
24 through 14, and incorporated here by this reference.

25 \_\_\_\_\_  
26 <sup>1</sup> Promethazine is a prescription drug used to treat several conditions, including  
27 allergies, motion sickness, nausea and vomiting, anxiety before surgery, and pain after surgery. It  
28 is also used as a sleep aid, including before and after surgery. Common side effects of  
Promethazine are dizziness, extreme drowsiness, blurred vision, disorientation, and  
hallucinations.

<sup>2</sup> Tetrahydrocannabinol (THC) is the main psychoactive compound in marijuana.





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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 Phillip Alexis Gomez, Jr. for a Pharmacy Technician Applicant;
2. Taking such other and further action as deemed necessary and proper.

DATED: October 31, 2019



---

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

SD2019702699  
72034127.docx