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

13 In the Matter of the Statement of Issues
Against:

Case No. 6829

14 **BRIAN LEE PURCELL**

STATEMENT OF ISSUES

15 **Pharmacy Technician Registration**
16 **Applicant**

17 Respondent.

18
19 **PARTIES**

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

23 2. On or about May 9, 2019, the Board of Pharmacy (Board), Department of Consumer
24 Affairs received an application for a Pharmacy Technician Registration from Brian Lee Purcell
25 (Respondent). On or about May 6, 2019, Brian Lee Purcell certified under penalty of perjury to
26 the truthfulness of all statements, answers, and representations in the application. The Board
27 denied the application on September 17, 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 (Code) unless
4 otherwise indicated.

5 4. Section 4300, subdivision (c) of the Code states, in pertinent part, that the Board may
6 refuse a license to any applicant guilty of unprofessional conduct. The Board may, in its sole
7 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 states:

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

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

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

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 6. Section 482 of the Code states:

6 (a) Each board under the provisions of this code shall develop criteria to evaluate
7 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
furnished by the applicant or licensee.

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

13 7. Section 493 of the Code states:

14 Notwithstanding any other provision of law, in a proceeding conducted by a
15 board within the department pursuant to law to deny an application for a license or to
suspend or revoke a license or otherwise take disciplinary action against a person who
16 holds a license, upon the ground that the applicant or the licensee has been convicted
of a crime substantially related to the qualifications, functions, and duties of the
17 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, and the board may inquire
18 into the circumstances surrounding the commission of the crime in order to fix the
degree of discipline or to determine if the conviction is substantially related to the
19 qualifications, functions, and duties of the licensee in question.

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

21 (c) This section shall become inoperative on July 1, 2020, and, as of January 1,
22 2021, is repealed.

23 8. Section 4301 of the Code states:

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. Unprofessional
25 conduct shall include, but is not limited to, any of the following:

26 . . .

27 (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
28 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

2

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

4 For the purpose of denial, suspension, or revocation of a personal or facility
5 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
6 Professions Code, a crime or act shall be considered substantially related to the
7 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.

8 **FIRST CAUSE FOR DENIAL OF APPLICATION**

9 **(August 4, 2015 Criminal Conviction for Assault)**

10 12. Respondent's application for registration as a pharmacy technician is subject to denial
11 under section 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that Respondent was
12 convicted of a crime that is substantially related to the qualifications, duties, and functions of a
13 pharmacy technician, and would be a cause for discipline under section 4301, subdivision (l) for a
14 registered pharmacy technician. The circumstances are as follows:

15 a. On or about August 4, 2015, in a special court martial entitled *United States v.*
16 *ATAN Brian L. Purcell*, convened at the Western Judicial Circuit Courthouse, Naval Base San
17 Diego, Convening Order No. 01-15, Respondent was convicted on his plea of guilty to violating
18 Uniform Code of Military Justice, Article 128, Assault Consummated by a Battery. As a result of
19 the conviction, Respondent was confined for 75 days, reduced in rank to an E-1, and he received
20 a bad conduct discharge from the United States Navy.

21 b. The circumstances that led to the conviction are that on or about September 30,
22 2014, while serving on board the U.S.S. Peliliu, Respondent pulled down the underwear of a
23 sleeping petty officer, and touched his forehead to the petty officer's exposed penis without his
24 consent.

25 **SECOND CAUSE FOR DENIAL OF APPLICATION**

26 **(Commission of Act Involving Moral Turpitude)**

27 13. Respondent's application for registration as a pharmacy technician is subject to denial
28 under section 480, subdivision (a)(3)(A) of the Code in that Respondent committed an act

1 involving moral turpitude, as described in paragraph 12, above, which is incorporated herein by
2 reference. Such conduct would be a cause for discipline under section 4301, subdivision (f) for a
3 registered pharmacy technician.

4 **PRAYER**

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

- 7 1. Denying the application of Brian Lee Purcell for a Pharmacy Technician Registration;
8 2. Taking such other and further action as deemed necessary and proper.

9
10 DATED: December 3, 2019



11 ANNE SODERGREN
12 Interim Executive Officer
13 Board of Pharmacy
14 Department of Consumer Affairs
15 State of California
16 *Complainant*