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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  
13 Against:

Case No. 6849

14 **JONATHAN PAUL GARCIA**

**STATEMENT OF ISSUES**

15 Pharmacy Technician Registration Applicant

16 Respondent.

17  
18 **PARTIES**

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 December 24, 2018, the Board received an application for a Pharmacy  
23 Technician Registration from Jonathan Paul Garcia (Respondent). On or about December 17,  
24 2018, Respondent certified under penalty of perjury to the truthfulness of all statements, answers,  
25 and representations in the application. The Board denied the application on August 20, 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 **STATUTORY PROVISIONS**

6 4. Section 480 states, in pertinent part:

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

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

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

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

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

18 (b) Notwithstanding any other provision of this code, a person shall not be  
19 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  
with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been  
20 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  
21 person when considering the denial of a license under subdivision (a) of Section 482.

22 (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  
23 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.

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

26 (e) This section shall become inoperative on July 1, 2020, and, as of January 1,  
27 2021, is repealed.

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

4           6.     Section 4301 states, in pertinent part:

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

7                 . . . .

8                 (f) The commission of any act involving moral turpitude, dishonesty, fraud,  
9 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.

10                . . . .

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

13                . . . .

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

24                . . . .

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

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1 **REGULATORY PROVISIONS**

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

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

7 8. **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

8 “Methamphetamine,” is a Schedule II controlled substance as designated by Health and  
9 Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to  
10 Business and Professions Code section 4022

11 **FIRST CAUSE FOR DENIAL OF APPLICATION**

12 **(Convictions of Substantially Related Crimes)**

13 9. Respondent's application is subject to denial under section 480, subdivision (a)(1), in  
14 that Respondent has been convicted crimes substantially related to the qualifications, functions or  
15 duties of a pharmacy technician, as follows:

16 a. On or about June 28, 2016, after pleading nolo contendere, Respondent was convicted  
17 of one misdemeanor count of violating Penal Code section 484, subdivision (a) - 490.2,  
18 subdivision (a) [petty theft] in the criminal proceeding entitled *The People of the State of*  
19 *California v. Johnathan Paul Garcia* (Super. Ct. L.A. County, 2016, No. 6VW03083). The court  
20 sentenced Respondent to serve 45 days in jail and placed him on 24 months’ probation, with  
21 terms and conditions. The circumstances surrounding the conviction are that on or about June 22,  
22 2016, Respondent entered a Target store and selected two baby carriers from the baby  
23 department, placing one in a Target reusable bag and the other in the shopping cart. Respondent  
24 then proceeded to exit the store, passing all open and manned registers, and failed to pay for the  
25 exposed merchandise.

26 b. On or about December 5, 2011, after pleading nolo contendere, Respondent was  
27 convicted of one misdemeanor count of violating Health and Safety Code section 11377,  
28 subdivision (a) [possession of a controlled substance] in the criminal proceeding entitled *The*

1 *People of the State of California v. Johnathan Paul Garcia* (Super. L.A. County, 2011, No.  
2 1PY06368). The court sentenced Respondent to serve 90 days in jail and placed him on 24  
3 months' probation, with terms and conditions. The circumstances surrounding the conviction are  
4 that on or about November 14, 2011, Respondent was placed under arrest by Los Angeles Police  
5 officers for an outstanding warrant. During a search of Respondent, an officer found a small zip  
6 lock baggie containing a crystal like substance resembling methamphetamine inside his wallet.

7 c. On or about December 5, 2011, after pleading guilty, Respondent was convicted of  
8 one misdemeanor count of violating Health and Safety Code section 11364, subdivision (a)  
9 [possession of controlled substance paraphernalia]in the criminal proceeding entitled *The People*  
10 *of the State of California v. Johnathon Paul Garcia* (Super. L.A. County, 2011, No. 1PY01797).  
11 The court sentenced Respondent to serve 15 days in jail.

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

### 13 **(Acts Involving Dishonesty, Fraud, or Deceit)**

14 10. Respondent's application is subject to denial under section 480, subdivision (a)(2), in  
15 that on or about June 22, 2016, Respondent committed acts involving dishonesty, fraud, or deceit  
16 with the intent to substantially benefit himself, or substantially injure another. Complainant refers  
17 to, and by this reference incorporates, the allegations set forth above in paragraph 9, subparagraph  
18 (a), as though set forth fully.

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

### 20 **(Acts Warranting Denial of Licensure)**

21 11. Respondent's application is subject to denial under section 480, subdivisions (a)(3)A  
22 and (a)(3)(B), in that Respondent committed acts which if done by a licentiate of the business and  
23 profession in question, would be grounds for suspension or revocation of his license as follows:

24 a. Respondent was convicted of crimes substantially related to the qualifications,  
25 functions, or duties of a pharmacy technician which to a substantial degree evidences his present  
26 or potential unfitness to perform the functions authorized by his license in a manner consistent  
27 with the public health, safety, or welfare, in violation of sections 4301, subdivision (l) and 490, in  
28 conjunction with California Code of Regulations, title 16, section 1770. Complainant refers to,

1 and by this reference incorporates, the allegations set forth above in paragraph 9, as though set  
2 forth fully.

3 b. On or about June 22, 2016, Respondent committed acts involving moral turpitude,  
4 dishonesty, fraud, or deceit in violation of section 4301, subdivision (f). Complainant refers to,  
5 and by this reference incorporates, the allegations set forth above in paragraph 9, subparagraph  
6 (a), as though set forth fully.

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

10 **PRAYER**

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

- 13 1. Denying the application of Jonathan Paul Garcia for a Pharmacy Technician  
14 Registration; and  
15 2. Taking such other and further action as deemed necessary and proper.

16  
17 DATED: December 3, 2019



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

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