

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues
Against:

SCOTT ALAN MILLER,

Respondent.

Case No. 6486

OAH No. 2018100439

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on July 2, 2019.

It is so ORDERED on June 3, 2019.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Victor Law", written over a horizontal line.

By

Victor Law, R.Ph.
Board President

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PROPOSED DECISION

Debra D. Nye-Perkins, Administrative Law Judge, State of California, Office of Administrative Hearings (OAH), heard this matter in San Diego, California on March 20, 2019.

Stephen A. Aronis, Deputy Attorney General, represented Virginia Herold (complainant), Executive Officer, Board of Pharmacy.

Scott Alan Miller, respondent, appeared on his own behalf.

The matter remained open to allow respondent to provide additional documents for consideration. At the hearing respondent was instructed to provide any additional documents to complainant by March 22, 2019, and complainant was instructed to provide any objections to those documents, as well as respondent's documents, to OAH by March 26, 2019. On March 25, 2019, OAH received from respondent a handwritten letter plus 16 pages of certifications for various classes with no indication those documents had been provided to complainant. A Notice of Ex Parte Communication was issued on March 25, 2019, regarding those documents wherein the handwritten letter was marked as Exhibit B, the certifications were marked as Exhibit C, and the Notice of Ex Parte Communication was marked as Exhibit D. Exhibits B and C were received into evidence as administrative hearsay, and Exhibit D was received into evidence. The Notice of Ex Parte Communication provided that complainant had until March 29, 2019, to provide any objections regarding the ex parte communication, after which the record would be closed.

Later in the afternoon on March 25, 2019, complainant provided a letter to OAH with additional attached documents sent to him by respondent, as well as complainant's objections to those documents. The attachments to complainant's letter included two letters of recommendation, and unofficial transcripts from Kaplan/Brightwood College. Additionally,

complainant mentioned in the letter that respondent sent him a number of certifications for individual courses, but he was not able to open those documents in the format provided; accordingly, he instructed respondent to send those documents directly to the OAH. The additional documents sent with complainant's counsel's letter to OAH were marked for identification, and complainant's objections to those documents were considered. The two letters of recommendation were marked as Exhibit E and received into evidence as administrative hearsay, and the unofficial transcripts were marked as Exhibit F and received into evidence.

The matter was submitted for decision on March 29, 2019.

FACTUAL FINDINGS

Jurisdictional Matters

1. On April 28, 2016, the board received respondent's first application for licensure as a pharmacy technician from respondent. On August 26, 2016, the board denied that application on the basis that respondent was previously licensed by the California Bureau of Automotive Repair (BAR) as an Advanced Emission Specialist Technician and that license was twice disciplined by BAR. Respondent did not contest this denial by the board.

2. On January 23, 2018, the board received respondent's second application for licensure as a pharmacy technician.

3. On April 9, 2019, the board sent a letter to respondent denying his second application for licensure as a pharmacy technician on the basis of BAR's discipline of his Advanced Emission Specialist Technician license and subsequent revocation of his Advanced Emission Specialist Technician license. On May 28, 2019, respondent appealed the board's denial of his second application.

4. On September 10, 2018, complainant signed the Statement of Issues, which sought denial of respondent's application for licensure as a pharmacy technician based upon six causes for denial. The first two causes for denial assert that respondent committed acts warranting the denial of a pharmacy technician license as a result of his BAR license discipline in 2011 (first cause for denial) and again in 2014 (second cause for denial). The third and fourth causes for denial assert that respondent committed acts involving dishonesty, fraud, and deceit for his acts resulting in BAR's imposition of discipline against his Advanced Emission Specialist Technician license in 2011 (third cause for denial) and in 2014 (fourth cause for denial). The fifth and sixth causes for denial assert that respondent knowingly made or signed certificates that falsely represented the existence of facts resulting in BAR's imposition of discipline on his Advanced Emission Specialist Technician license in 2011 (fifth cause for denial) and in 2014 (sixth cause for denial).

5. The Statement of Issues and other required jurisdictional documents were served on respondent.

6. Respondent filed a timely Notice of Defense, and this hearing followed.

2011 Discipline of Respondent's Advanced Emission Specialist Technician License

7. BAR issued to respondent his Advanced Emission Specialist Technician License sometime in 2002. Between October and December of 2009, BAR conducted six undercover operations at the smog inspection station where respondent was employed. A summary of each of those undercover operations is below:

- Undercover Operation #1 - On October 24, 2009, a BAR undercover operator took a 1991 Toyota pick-up truck to the smog station where respondent worked. The BAR undercover operator observed respondent perform the smog inspection on the 1991 pick-up truck. Respondent failed to conduct the required functional ignition timing check, visual fuel cap check, functional fuel cap integrity test, or the functional low pressure fuel evaporative test (LPFET) on the vehicle. Respondent issued a certificate of compliance for the 1991 pick-up without performing the required tests.
- Undercover Operation #2 - On October 24, 2009, at 11:40 a.m., a BAR undercover operator took a 1989 Chevrolet Corsica to the smog station where respondent worked. The BAR undercover operator observed respondent perform the smog inspection on the 1989 Chevy Corsica. Respondent failed to conduct the required visual fuel cap check, functional fuel cap integrity test, or the functional low pressure fuel evaporative test (LPFET) on the vehicle. Respondent issued a certificate of compliance for the 1989 Chevy Corsica without performing the required tests.
- Undercover Operation #3 - On October 24, 2009, at 1:42 p.m., a BAR undercover operator took a 1995 Chevrolet Lumina to the smog station where respondent worked. The BAR undercover operator observed respondent perform the smog inspection on the 1995 Chevy Lumina. Respondent failed to conduct the required visual fuel cap check, functional fuel cap integrity test, or the functional low pressure fuel evaporative test (LPFET) on the vehicle. Respondent issued a certificate of compliance for the 1995 Chevy Lumina without performing the required tests.
- Undercover Operation #4 - On November 17, 2009, a BAR undercover operator took a 1988 Toyota Tercel to the smog station where respondent worked. Prior to going to the station BAR had altered the 1988 Toyota Tercel such that the ignition timing was not adjusted to the manufacturer's specifications, the fuel cap was defective, the fuel evaporative upstream hose was disconnected from the charcoal

canister, the vacuum hose line to the vacuum sensor at the bi-metallic vacuum switching valve (BVSV) was disconnected, causing excessive tailpipe emissions on the vehicle. After the first smog inspection of the 1988 Toyota Tercel at the smog inspection station, the BAR undercover operator was informed that the vehicle did not pass the inspection and needed a new catalytic converter to pass. The undercover operator paid for the installation of the new catalytic converter on the vehicle. Thereafter, a second smog inspection of the 1988 Toyota Tercel was conducted by respondent. Respondent issued a certificate of compliance certifying that the 1988 Toyota Tercel passed the smog inspection. Thereafter, BAR inspected the 1988 Toyota Tercel and determined that the hoses had been re-connected to the charcoal canister and the vacuum sensor at the BVSV, but the ignition timing was still not adjusted to the manufacturer's specifications and the defective fuel cap was still in place on the vehicle. Accordingly, the vehicle should not have passed the smog inspection, but respondent certified that the vehicle did pass the smog inspection.

- Undercover Operation #5 - On November 18, 2009, a BAR undercover operator took a 1989 Honda Accord to the smog station where respondent worked. Prior to going to the station BAR had altered the 1989 Honda Accord such that the ignition timing was not adjusted to the manufacturer's specifications, the fuel cap was defective, and the vacuum hose to the exhaust gas recirculation (EGR) valve was disconnected, causing excessive tailpipe emissions on the vehicle. After the first smog inspection of the 1989 Honda Accord at the smog inspection station, the BAR undercover operator was informed that the vehicle did not pass the inspection and needed a new catalytic converter to pass. The first smog inspection was conducted by respondent and the information respondent entered into the BAR computer system regarding that smog inspection showed that while the vehicle failed the smog inspection, respondent passed the vehicle for the visual and functional tests, including the functional ignition timing tests and the functional fuel cap integrity test. Thereafter, BAR inspected the 1989 Honda Accord and confirmed that while the hose to the EGR valve had been reconnected, the ignition timing still was not adjusted to the manufacturer's specifications and the defective fuel cap was still in place on the vehicle. Respondent passed those portions of the smog inspection despite these problems.
- Undercover Operation # 6 - On December 22, 2009, a BAR undercover operator took a 1992 Toyota Corolla to the smog station where respondent worked. Prior to going to the station BAR had altered the 1992 Toyota Corolla such that the ignition timing was not adjusted to the manufacturer's specifications, the fuel cap was defective, the fuel evaporative upstream hose was disconnected from the charcoal canister, the vacuum hose line to the vacuum sensor was disconnected, causing excessive tailpipe emissions on the vehicle. After the first smog inspection of the 1992 Toyota Corolla at the smog inspection station, BAR undercover operator was informed that the vehicle did not pass the inspection and

needed a new catalytic converter and oxygen sensor to pass the smog inspection. The first smog inspection was conducted by respondent and the information respondent entered into the BAR computer system regarding that smog inspection showed that while the vehicle failed the smog inspection, respondent passed the vehicle for the visual and functional tests, including the functional ignition timing tests, the functional fuel cap integrity test, and the functional LPFET check. The undercover BAR representative paid the smog station for the replacement of a catalytic converter and new oxygen sensor of the vehicle. A second smog inspection was then conducted by respondent, who passed the smog inspection for the 1989 Honda Accord and issued a certificate of compliance for the vehicle. Thereafter, the BAR inspected the 1989 Honda Accord and confirmed that while the hose to the EGR valve had been reconnected, the ignition timing still was not adjusted to the manufacturer's specifications and the defective fuel cap was still in place on the vehicle. On the first and second smog inspections of the 1989 Honda Accord, respondent passed those portions of the smog inspection despite these problems.

8. On or around October 29, 2010, Sherry Mehl, Chief of BAR, filed accusation number 79/11-30 against respondent and others alleging 17 causes for discipline against respondent's technician's license based upon the above listed actions. Those 17 causes for discipline included allegations that respondent violated Health and Safety Code sections 44012 (failure to perform the emissions control tests in accordance with procedures required by BAR for each of the six vehicles above); 44059 (willfully making false entries in the BAR emission inspection system (EIS) resulting in the issuance of an electronic smog certificate of compliance for the six vehicles above); 44072.2, subdivision (c) (failure to comply with the provisions of California Code of Regulations, title 16, sections 3340.24, subdivision (c) (falsely or fraudulently issuing an electronic smog certificate of compliance for the vehicles above), 3340.30, subdivision (a) (failure to inspect the vehicles in accordance with applicable law and regulation), section 3340.41, subdivision (c) (knowingly entering into the EIS false information), and section 3340.42 (failure to conduct the required smog tests on the vehicles above)); and 44072.2, subdivision (d) (committing a dishonest, fraudulent, or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance for the above vehicles).

9. On July 8, 2011, respondent executed a Stipulated Settlement and Disciplinary Order As to Respondent Scott Alan Miller, wherein he agreed that BAR could establish a factual basis for the charges in the accusation and gave up his right to contest the charges. Respondent agreed and stipulated to the discipline of his Advanced Emission Specialist Technician License. BAR adopted the stipulation as its decision and the order became effective on November 10, 2011. Under the terms of the order respondent's Advanced Emission Specialist License was revoked, and the revocation was stayed for five years under various terms and conditions, including the actual suspension of his license for 30 days.

2014 Discipline of Respondent's Advanced Emission Specialist Technician License

10. On September 14, 2012, a BAR undercover operator conducted an undercover operation at the smog station where respondent was employed. On that day the BAR undercover operator drove a BAR documented 1992 Nissan Maxima to the station and requested a smog inspection. Prior to the undercover operation, BAR had altered the 1992 Nissan Maxima such that the ignition timing had been adjusted to be outside of manufacturer's specifications causing the vehicle to be incapable of passing a properly conducted smog inspection. Respondent performed the smog inspection on the 1992 Nissan Maxima and issued a certificate of compliance for the vehicle that the vehicle had passed the smog inspection, when in fact the vehicle could not have passed the functional portion of the smog inspection because the ignition timing had been adjusted beyond specification.

11. On January 30, 2014, Patrick Dorais, Chief of BAR, filed a first amended accusation and petition to revoke probation, Case No. 79/13-58, against respondent alleging three causes for discipline of respondent's Advanced Emissions Specialist Technician License, and one cause to revoke his probation, based upon the September 14, 2012, smog inspection of the 1992 Nissan Maxima. The first cause for discipline alleged respondent violated Health and Safety Code section 44012 (failure to follow test procedures as required by BAR); 44012, subdivision (f) (failure to perform functional emissions control tests in accordance with procedures prescribed by BAR); and 44032 (failure to perform tests of the emission control devices and systems in accordance with section 44012 of the Health and Safety Code). The second cause for discipline alleged that respondent violated Health and Safety Code section 44072.2, subdivision (c), in that he violated the following sections of the California Code of Regulations, title 16, sections: 3340.24, subdivision (c) (falsely or fraudulently issuing an electronic certificate of compliance without performing a bona fide inspection of emission control devices as required by Health and Safety Code section 44012); 3340.30, subdivision (a) (failure to inspect and test the vehicle in accordance with Health and Safety Code section 44012); 3340.42 (failure to conduct the required smog tests and inspections on the vehicle in accordance with the BAR specifications). The third cause for discipline alleged that respondent violated Health and Safety Code section 44072.2, subdivision (d), in that he committed acts of dishonesty, fraud, and deceit whereby another was injured by issuing an electronic certificate of compliance for the 1992 Nissan Maxima without performing a bona fide inspection on the vehicle. The cause to revoke probation asserted against respondent was based on the allegation that he failed to obey all laws as required by the second condition of his probationary terms because respondent failed to abide by the laws cited above. Respondent timely filed a notice of defense to the first amended accusation and petition to revoke probation.

12. On April 1, 2014, the BAR issued a Default Decision and Order regarding the first amended accusation and petition to revoke probation whereby respondent's Advanced Emissions Specialist Technician License was revoked, effective April 23, 2014.

Testimony of Connie Tang

13. Connie Tang is employed as an inspector for the California Board of Pharmacy. She has held that position for three years. Her duties include inspecting licensees and licensed facilities on behalf of the board to ensure compliance with the laws and regulations related to the board. Additionally, she investigates consumer complaints regarding licensees and facilities. She is responsible for summarizing her investigations in reports and providing those to the board. Ms. Tang did not conduct the investigation against respondent in this matter on behalf of the board, but she did review the investigative report prepared by another board inspector named Lisa Esquivel, who conducted the investigation of respondent in this matter in 2018. Ms. Tang testified that Ms. Esquivel drafted her report in the normal course of her business as a board inspector. Additionally, Ms. Tang reviewed the investigative report of Gabriela Coronado, another board inspector, who conducted an investigation of respondent in 2016 and prepared a report summarizing that investigation. Ms. Tang also testified that Ms. Coronado drafted her report in the ordinary course of her business as a board inspector.

14. Ms. Tang testified that the duties of a licensed pharmacist technician are critical in the operation of a pharmacy and require an extensive amount of trust in the pharmacist technician because he or she is responsible for providing support to pharmacists by typing up prescriptions, filling prescriptions, billing prescriptions, communicating with physicians, and authorizing refills for controlled substances and other pharmaceuticals. Ms. Tang stated that pharmacy technicians also keep track of inventory at a pharmacy, including inventory of controlled substances, and have extensive contact with patients, including accessing sensitive financial information for patients such as credit cards and health insurance information. Pharmacy technicians receive and process prescriptions over the telephone for both controlled substances and other pharmaceuticals. Ms. Tang stated that only pharmacists can take a new prescription over the telephone, but pharmacy technicians can take refill prescriptions over the phone. While a pharmacy technician's work is overseen by a licensed pharmacist, it is not possible for a pharmacist to check and verify everything that a pharmacy technician does. She stated that the role of the board in regulating pharmacy technicians is to protect the public and ensure that all California pharmacies are operating safely. In considering a new application for a pharmacy technician license, the board looks at the overall character of the applicant, including whether the applicant has any prior discipline by other licensing agencies.

15. Ms. Tang stated that she reviewed BAR's disciplinary orders against respondent's Advanced Emissions Specialist Technician license and understands that respondent committed fraud, and his license was suspended and placed on probation in 2011 as a result of his fraudulent actions in 2009. Ms. Tang emphasized that the board is very concerned because while respondent's license was on probation, he again committed fraud in 2012 resulting in the revocation of his license during the term of his probation. In the pharmacy industry, as opposed to smog inspections, the stakes are higher with regard to the effects to the public if a pharmacy technician engages in fraudulent behavior or even makes mistakes regarding the filling of prescriptions. Pharmacy technicians have access to

dangerous drugs, including controlled substances. Ms. Tang stated that respondent's history of fraudulent behavior while licensed by BAR is a serious concern for public safety if respondent is given a pharmacy technician license. She stated that a pharmacist must be able to trust pharmacy technicians because it is impossible for a pharmacist to check everything they do. The board issues licenses to pharmacy technicians only after the board has investigated those persons and has assurances that those persons are trustworthy, and the board has no such assurances with respondent.

Respondent's Testimony

16. Scott Alan Miller is 46 years old and is currently employed as a delivery driver for Advanced Care Pharmacy, a "closed door pharmacy and hospice" located in Escondido, California. His responsibilities include the delivery of pharmaceuticals, including controlled substances, to terminally ill patients in their homes and other facilities. He has held that job for the past two years. He worked as a smog technician from 2002 to 2014. After his Advanced Emissions Specialist Technician license was revoked, respondent worked for six to eight months in general automotive repair until he hurt his wrist. After his wrist injury, he went to school at Brightwood College, now called Kaplan College, and received his diploma to become a pharmacy technician. He testified he obtained that diploma in nine months as part of an accelerated program and his grade point average was 3.87 at graduation when he graduated in 2016. Respondent has been married for two years and he has two children, ages 23 and 19, from a previous marriage.

17. Respondent testified that from 2002 to 2014 he had an Advanced Emissions Specialist Technician license from BAR and worked as a smog technician. Respondent stated that during that time he worked at a smog station where he conducted up to 35 smog inspections per day and as a result he "was stressed." He stated that he was so busy that he "may have gotten complacent" and did not conduct some inspections properly or thoroughly, but he did not intentionally fail to conduct proper inspections. Respondent admitted during his testimony that he failed to properly inspect each of the six vehicles at issue in the accusation filed against him by BAR resulting in his 2011 license discipline. He also admitted to failing to properly inspect the 1992 Nissan Maxima on September 14, 2012, which was the basis of the revocation of his license in 2014. Respondent testified that after his license was put on probation in 2011 he had every intention of abiding by all of the required laws and regulations of smog inspection, however he simply made a mistake in 2012 when he did not see the timing marks correctly when checking the ignition timing on the 1992 Nissan Maxima. Respondent said he simply made a mistake despite his best efforts not to do so. Respondent did not show up to contest the first amended accusation and petition to revoke probation because he decided to "walk away" from being a smog technician because it was not the profession for him. Respondent admitted it was wrong to fail to properly smog test the 1992 Nissan Maxima after his license was already on probation, and as a result he decided he was done being a smog technician. Respondent testified that he was simply not very good at being a smog technician and he did not apply himself when he went to school to become a smog technician. By comparison, respondent applied himself in school to become a pharmacy technician and received very good grades.

18. At the hearing, respondent admitted his mistakes as a smog technician and was disappointed in himself for making those mistakes. He has paid all the required costs of investigation and prosecution incurred by BAR for the discipline of his smog license, which he stated was approximately \$7,000. Respondent has never been arrested and has no criminal convictions. He currently holds a priesthood with the Church of Jesus Christ of Latter Day Saints, which is in good standing. Respondent worked very hard to obtain good grades at Brightwood College/Kaplan College and provided a copy of his transcript, which was received in evidence, showing his had a cumulative grade point average of 3.87.

19. Respondent testified he has completed the requirements to become certified by the Pharmacy Technician Certification Board, as a certified pharmacy technician (CPhT). He provided a copy of his certification card from the Pharmacy Technician Certification Board showing that he received the certification on August 29, 2016, and it expires on August 31, 2020. Respondent testified that this certification allows him to work at federal facilities that have pharmacies, such as a Veteran's Administration (VA) hospital or military base as a pharmacy technician without having to obtain a state license. The certification requires that he pass an examination.

20. Respondent enjoys the work of a pharmacy technician and believes that he has been sufficiently rehabilitated from his actions as a smog technician. He is confident in his abilities as a pharmacy technician, which is in stark contrast to his work as a smog technician that he characterizes as the wrong profession for him. He has worked very hard and focused on his studies to become a good pharmacy technician and believes he would be a great one.

Other Evidence

21. In addition to his transcripts from Brightwood College/Kaplan College, respondent provided numerous certificates from Brightwood College/Kaplan College, including a copy of his diploma, and multiple "Highest Honors" certificates for earning a 4.0 grade point average in the pharmacy technician program during various months. Respondent also submitted two letters of recommendation. The first letter was from Jeanie Skiff, CPhT, and dated November 1, 2016. Ms. Skiff wrote that respondent was a former student of hers and "is truly one of the best students I've had during my time at Brightwood College." Ms. Skiff further wrote that respondent "has a great attention to detail, [is] punctual, respectful, intelligent, proactive, eager to learn, and has an excellent attitude." She wrote that when respondent did his externship at the VA hospital in La Jolla, California, the feedback she received for him showed that his work was accurate and "everyone enjoyed having him around."

The second letter was from Marcelino Ergino, CPhT, Pharmacy Technician Supervisor at the VA San Diego Healthcare System, who wrote that respondent completed his externship at the VA and is "eager to learn," "has a great attitude," and "always on time." He further wrote that he would recommend respondent for any position as a pharmacy technician.

LEGAL CONCLUSIONS

Applicable Statutes and Regulations

11. Pursuant to 4300, subdivision (c), the Board may “refuse a license to any applicant guilty of unprofessional conduct.”

12. Business and Professions Code section 4301 defines “unprofessional conduct” to include:

[¶] . . . [¶]

(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.

[¶] . . . [¶]

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

13. Business and Professions Code section 480, states, in part:

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

[¶] . . . [¶]

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

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

(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. . . .

14. Business and Professions Code section 4313 states:

In determining whether to grant an application for licensure or whether to discipline or reinstate a license, the board shall give consideration to evidence of rehabilitation. However, public protection shall take priority over rehabilitation and, where evidence of rehabilitation and public protection are in conflict, public protection shall take precedence.

5. In California Code of Regulations, title 16, section 1769, the board has set forth the following criteria for rehabilitation when considering the denial of a license:

(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.

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

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

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

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

6. California Code of Regulations, 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.

Cause Exists to Deny Respondent's Application for Licensure

7. Cause was established under Business and Professions Code sections 4301, subdivision (p), and 480, subdivisions (a)(3)(A) and (a)(3)(B), in conjunction with California Code of Regulations, title 16, section 1770, to deny respondent's application. He committed acts in 2009 while holding an Advanced Emissions Specialist Technician license which are grounds for denial of a pharmacy technician license under Business and Professions Code section 4301, subdivision (p), and 480, subdivisions (a)(3)(A) and (a)(3)(B).

8. Cause was established under Business and Professions Code sections 4301, subdivision (p), and 480, subdivisions (a)(3)(A) and (a)(3)(B), in conjunction with California Code of Regulations, title 16, section 1770, to deny respondent's application. He committed acts in 2012 while holding an Advanced Emissions Specialist Technician license which are grounds for denial of a pharmacy technician license under Business and Professions Code section 4301, subdivision (p), and 480, subdivisions (a)(3)(A) and (a)(3)(B).

9. Cause was established under Business and Professions Code sections 4301, subdivision (f), and 480, subdivisions (a)(2), (a)(3)(A) and (a)(3)(B), in conjunction with California Code of Regulations, title 16, section 1770, to deny respondent's application. He committed acts involving dishonesty, fraud and deceit in 2012 while holding an Advanced Emissions Specialist Technician license which are grounds to deny a pharmacy technician under Business and Professions Code section 4301, subdivision (f), and 480, subdivisions (a)(2), (a)(3)(A), and (a)(3)(B).

10. Cause was established under Business and Professions Code sections 4301, subdivision (f), and 480, subdivisions (a)(2), (a)(3)(A) and (a)(3)(B), in conjunction with California Code of Regulations, title 16, section 1770, to deny respondent's application. He committed acts involving dishonesty, fraud and deceit in 2009 while holding an Advanced Emissions Specialist Technician license which are grounds to deny a pharmacy technician under Business and Professions Code section 4301, subdivision (f), and 480, subdivisions (a)(2), (a)(3)(A), and (a)(3)(B).

11. Cause was established under Business and Professions Code sections 4301, subdivision (g), and 480, subdivisions (a)(2), (a)(3)(A) and (a)(3)(B), in conjunction with California Code of Regulations, title 16, section 1770, to deny respondent's application. He knowingly made a certificate that falsely represented the existence of facts that vehicles passed a smog inspection when they should not have passed in 2009 while holding an Advanced Emissions Specialist Technician license which are grounds to deny a pharmacy technician license under Business and Professions Code section 4301, subdivision (g), and 480, subdivisions (a)(2), (a)(3)(A), and (a)(3)(B).

12. Cause was established under Business and Professions Code sections 4301, subdivision (g), and 480, subdivisions (a)(2), (a)(3)(A) and (a)(3)(B), in conjunction with California Code of Regulations, title 16, section 1770, to deny respondent's application. He knowingly made a certificate that falsely represented the existence of facts that a vehicle

passed a smog inspection when it should not have passed in 2012 while holding an Advanced Emissions Specialist Technician license which are grounds to deny a pharmacy technician license under Business and Professions Code section 4301, subdivision (g), and 480, subdivisions (a)(2), (a)(3)(A), and (a)(3)(B).

Evaluation

13. Legal grounds exist for denying respondent's application to become a pharmacy technician. However, respondent has demonstrated significant and sustained rehabilitation. The discipline against his Advanced Emissions Specialist Technician license arose from incidents that occurred in 2009 and 2012, about ten and seven years ago respectively. Respondent admitted to his wrongdoing and as a result of his mistakes chose to change professions. Respondent has incurred no arrests or convictions in his life. He has paid all costs of enforcement of \$7,000 to BAR as a result of his license discipline. He has since worked diligently to obtain a diploma to work as a pharmacy technician and applied himself to obtain a grade point average of 3.87. He has provided letters of recommendation from his teacher at Brightwood College/Kaplan College, as well as a pharmacy technician who supervised his work as an extern at the VA hospital. Each praised his attention to detail and eagerness to learn. He has worked successfully as a delivery driver for a pharmacy delivering pharmaceuticals to terminally ill patients. He has also worked toward and successfully obtained certification from the Pharmacy Technician Certification Board, as a certified pharmacy technician (CPhT). Respondent's actions are consistent with those of a person who has made truly substantial progress towards rehabilitation. His desire to work as a pharmacy technician is the reason he seeks licensure in California.

14. The evidentiary significance of an individual's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*In Re Gossage* (2000) 23 Cal.4th 1080, 1098; *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) One of the most crucial indicators of rehabilitation is sustained good conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.) By this yardstick, respondent has demonstrated rehabilitation.

15. Rehabilitation is also a state of mind. The law looks with favor upon rewarding with the opportunity to serve one who has achieved reformation and regeneration. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Respondent has been forthcoming about his 2011 and 2014 license discipline and admits his wrongdoing. Respondent demonstrated the state of mind of someone who has made substantial progress toward rehabilitation.

16. The primary purpose of the board is to protect the public. (Bus. & Prof. Code, § 4001.1.) "Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." (*Ibid.*) Appropriate terms and conditions of probation will enable the board to meet its responsibility to protect the

public and ensure, through its oversight, that respondent's rehabilitation continues once he begins to practice as a pharmacy technician.

17. The board's Disciplinary Guidelines (the guidelines) were created, in part, to provide public protection. Imposing requirements upon respondent beyond that required to protect the public would be punitive and impermissible. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.) Respondent has demonstrated good conduct over the past seven years and has provided sufficient rehabilitation evidence to demonstrate that an outright denial of his pharmacy technician license would be impermissibly punitive in nature and beyond that required to protect the public.

18. The evidence established that respondent can be an asset to the profession of pharmacy technicians, and the public will benefit from his service. Therefore, to best ensure public protection and provide a meaningful measurement of respondent's continued rehabilitation, respondent should comply with the standard terms and conditions of probation, which will provide a valuable safeguard to the public to ensure his safe practice as a pharmacy technician in California.

ORDER

Upon satisfaction of all statutory and regulatory requirements for issuance of a pharmacy technician license, a pharmacy technician license shall be issued to respondent, Scott Alan Miller, and immediately revoked; the order of revocation is stayed, and respondent is placed on probation for three years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involved respondent's license or is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report such occurrence shall be considered a violation of probation.

2. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation.

Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff

Respondent shall timely cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of his probation, including but not limited to: timely responses to requests for information by board staff; timely compliance with directives from board staff regarding requirements of any term or condition of probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a violation of probation.

5. Reporting of Employment and Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 6486 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within ten (10) days of undertaking any new employment, respondent shall report to the board in writing the name, physical address, and mailing address of each of his employer(s), and the name(s) and telephone number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in-charge, designated representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work schedule, if known. Respondent shall also include the reason(s) for leaving the prior employment. Respondent shall sign and return to the board a written

consent authorizing the board or its designee to communicate with all of respondent's employer(s) and supervisor(s), and authorizing those employer(s) or supervisor(s) to communicate with the board or its designee, concerning respondent's work status, performance, and monitoring. Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause (a) his direct supervisor, (b) his pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of his employer, to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 6486, and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent shall cause the person(s) taking over the role(s) to report to the board in writing within fifteen (15) days of the change acknowledging that he or she has read the decision in case number 6486, and the terms and conditions imposed thereby.

If respondent works for or is employed by or through an employment service, respondent must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the board of the decision in case number 6486, and the terms and conditions imposed thereby in advance of respondent commencing work at such licensed entity. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through an employment service, respondent shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the board in writing acknowledging that he or she has read the decision in case number 6486, and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the board.

Failure to timely notify present or prospective employer(s) or failure to cause the identified person(s) with that/those employer(s) to submit timely written acknowledgments to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision includes any full-time, part-time, temporary, relief, or employment/management service position as a pharmacy technician, or any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer.

6. Notification of Change(s) in Name, Address(es), or Phone Number(s)

Respondent shall further notify the board in writing within ten (10) days of any change in name, residence address, mailing address, e-mail address or phone number.

Failure to timely notify the board of any change in employer, name, address, or phone number shall be considered a violation of probation.

7. Probation Monitoring Costs

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

8. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current pharmacy technician license shall be considered a violation of probation.

If respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

9. License Surrender While on Probation

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may relinquish his license, including any indicia of licensure issued by the board, along with a request to surrender the license. The board or its designee shall have the discretion whether to accept the surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish his pocket and/or wall license, including any indicia of licensure not previously provided to the board within ten (10) days of notification by the board that the surrender is accepted if not already provided.

Respondent may not reapply for any license from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the

license sought as of the date the application for that license is submitted to the board, including any outstanding costs.

10. Certification Prior to Work

Respondent shall be suspended, and shall not work as a pharmacy technician, until he has been certified as defined by Business and Professions Code section 4202, subdivision (a)(4), has submitted proof of certification to the board, and has been notified by the board or its designee that he may begin work. Failure to achieve certification within six (6) months of the effective date shall be considered a violation of probation.

During suspension, respondent shall not enter any pharmacy area or any portion of any other board licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the board, or any manufacturer, or any area where dangerous drugs and/or dangerous devices or controlled substances are maintained.

Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or dangerous devices or controlled substances.

During this suspension, respondent shall not engage in any activity that requires licensure as a pharmacy technician. Respondent shall not direct or control any aspect of the practice of pharmacy or of the manufacture, distribution, wholesaling, or retailing of dangerous drugs and/or dangerous devices, or controlled substances.

Failure to comply with any such suspension shall be considered a violation of probation.

11. Practice Requirement – Extension of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 40 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of probation, unless respondent receives a waiver in writing from the board or its designee.

If respondent does not practice as a pharmacy technician in California for the minimum number of hours in any calendar month, for any reason (including vacation), respondent shall notify the board in writing within ten (10) days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated

date(s) on which respondent will resume practice at the required level. Respondent shall further notify the board in writing within ten (10) days following the next calendar month during which respondent practices as a pharmacy technician in California for the minimum of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to be extended pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months. The board or its designee may post a notice of the extended probation period on its website.

12. Violation of Probation


If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and the board shall provide notice to respondent that probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed. The board or its designee may post a notice of the extended probation period on its website.

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, or the preparation of an accusation or petition to revoke probation is requested from the Office of the Attorney General, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

13. Completion of Probation

Upon written notice by the board or its designee indicating successful completion of probation, respondent's license will be fully restored.

DATED: April 26, 2019

DocuSigned by:

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DEBRA D. NYE-PERKINS
Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the Statement of Issues Against: 13 SCOTT ALAN MILLER 14 Pharmacy Technician Registration 15 Applicant 16 Respondent.	Case No. 6486 STATEMENT OF ISSUES
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18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
21 capacity as the Executive Officer of the California State Board of Pharmacy (Board), Department
22 of Consumer Affairs.
- 23 2. On or about January 22, 2018, the Board received an application for a Pharmacy
24 Technician Registration from Scott Alan Miller (Respondent). On or about January 18, 2018,
25 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and
26 representations in the application. On April 9, 2018, the Board denied the application.
- 27 3. On or about May 28, 2018, Respondent notified the Board in writing of his desire to
28 appeal that decision.

DISCIPLINARY HISTORY

1
2 4. On or about April 28, 2016, the Board received Respondent's previous application for
3 licensure as a pharmacy technician.

4 5. On or about August 26, 2016, the Board denied that application. Respondent did not
5 contest that denial. The basis for the denial was that Respondent was previously licensed by the
6 California Bureau of Automotive Repair (Bureau) as a Smog Technician, and that license was
7 twice disciplined by the Bureau. Those disciplinary matters are set forth below, as follows:

8 6. Bureau Accusation case no. 79/11-30: Sometime in 2002, the Bureau issued to
9 Respondent an Advanced Emission Specialist Technician license, no. EA 145097. Between
10 October and December 2009, the Bureau performed undercover operations and determined that
11 Respondent failed to comply with various statutes and regulations governing automotive
12 inspections, estimates, and repairs. The Bureau pursued disciplinary action against Respondent.
13 On November 10, 2011, pursuant to a stipulated disciplinary order between Respondent and the
14 Bureau, the Bureau disciplined Respondent's Advanced Emission Specialist Technician license
15 with a thirty-day suspension, followed by a five-year period of probation under specific terms and
16 conditions. The stipulated disciplinary order against Respondent determined that he committed
17 the following violations:

18 a. Respondent violated Health and Safety Code section 44072.2(a), by failing to
19 perform emissions tests for six vehicles in accordance with the procedures set forth by statute;
20 and by willfully making false entries into the statewide vehicle database system, resulting in the
21 issuance of electronic smog certificates of compliance for those six vehicles;

22 b. Respondent violated Health and Safety Code section 44072.2(c), in that he falsely or
23 fraudulently issued electronic smog certificates of compliance for six vehicles, failed to inspect
24 those vehicles in accordance with applicable statutes, and knowingly entered false information
25 into the statewide vehicle database;

26 c. Respondent violated Health and Safety Code section 44072.2(d) when he committed
27 dishonest, fraudulent, or deceitful acts whereby another was injured by issuing electronic smog
28 certificates of compliance for six vehicles without performing bona fide inspections of the

1 emissions control devices and systems on those vehicles, thereby depriving the People of the
2 State of California of the protections afforded by the Motor Vehicle Inspection Program.

3 7. Bureau Accusation case no. 79/13-58: On September 14, 2012, the Bureau
4 performed another undercover operation, and determined that Respondent issued a smog
5 certificate on a vehicle fraudulently, and in violation of statutes and regulations governing vehicle
6 emission inspections. The Bureau again pursued disciplinary action against Respondent. On
7 April 1, 2014, the Bureau revoked Respondent's Advanced Emission Specialist Technician
8 License no. EA 145097 by a default decision and order. The Bureau's default decision and order
9 against Respondent determined that he committed the following violations:

10 a. Respondent violated Health and Safety code section 44072.2(a) when he failed to
11 perform emissions tests in accordance with the procedures set forth by statute;

12 b. Respondent violated Health and Safety Code section 44072.2(c) when he falsely or
13 fraudulently issued a certificate of compliance for a motor vehicle without performing a bona fide
14 inspection of its emission control devices and systems according to the Bureau's specifications;

15 c. Respondent violated Health and Safety Code section 44072.2(d) when he committed
16 an act involving dishonesty, fraud, and deceit whereby another was injured, by issuing an
17 electronic certificate of compliance for a vehicle without performing a bona fide inspection of
18 emission control devices and systems, thereby depriving the People of the State of California of
19 the protections afforded by the Motor Vehicle Inspection Program.

20 JURISDICTION

21 8. This Statement of Issues is brought before the Board, under the authority of the
22 following laws. All section references are to the Business and Professions Code unless otherwise
23 indicated.

24 STATUTORY PROVISIONS

25 9. Section 480 of the Code states, in pertinent part:

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

28 ...

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

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

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

6

7 10. Section 4300 provides, in pertinent part, that every license issued by the Board is
8 subject to discipline, including suspension or revocation.

9 11. Section 4301 of the Code states, in pertinent part:

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

12 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
13 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.

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

16 . . .

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

18 . . .

19 12. Section 4307 of the Code states:

20 (a) Any person who has been denied a license or whose license has been
21 revoked or is under suspension, or who has failed to renew his or her license
22 while it was under suspension, or who has been a manager, administrator,
owner, member, officer, director, associate, or partner of any partnership,
23 corporation, firm, or association whose application for a license has been
denied or revoked, is under suspension or has been placed on probation, and
24 while acting as the manager, administrator, owner, member, officer, director,
associate, or partner had knowledge of or knowingly participated in any
conduct for which the license was denied, revoked, suspended, or placed on
25 probation, shall be prohibited from serving as a manager, administrator, owner,
member, officer, director, associate, or partner of a licensee as follows:

26 (1) Where a probationary license is issued or where an existing license is
27 placed on probation, this prohibition shall remain in effect for a period not to
exceed five years.

28 (2) Where the license is denied or revoked, the prohibition shall continue

until the license is issued or reinstated.

(b) "Manager, administrator, owner, member, officer, director, associate, or partner," as used in this section and Section 4308, may refer to a pharmacist or to any other person who serves in that capacity in or for a licensee.

(c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. However, no order may be issued in that case except as to a person who is named in the caption, as to whom the pleading alleges the applicability of this section, and where the person has been given notice of the proceeding as required by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code. The authority to proceed as provided by this subdivision shall be in addition to the board's authority to proceed under Section 4339 or any other provision of law.

13. Section 4313 of the Code states:

In determining whether to grant an application for licensure or whether to discipline or reinstate a license, the board shall give consideration to evidence of rehabilitation. However, public protection shall take priority over rehabilitation and, where evidence of rehabilitation and public protection are in conflict, public protection shall take precedence.

REGULATORY PROVISIONS

14. California Code of Regulations, title 16, section 1769, subdivision (b) states:

When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.

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

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

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

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

15. California Code of Regulations, 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

1 functions authorized by his license or registration in a manner consistent with the
2 public health, safety, or welfare.

3 **FIRST CAUSE FOR DENIAL**

4 **(Acts Warranting Revocation of Licensure: Bureau of Automotive Repair Accusation case
5 no. 79/11-30)**

6 16. Respondent's application is subject to denial pursuant to sections 4301, subdivision
7 (p), and 480, subdivisions (a)(3)(A), and (a)(3)(B), in conjunction with the California Code of
8 Regulations, title 16, sections 1769 and 1770, in that he committed acts while holding Advanced
9 Emission Specialist Technician License no. EA 145097, which are grounds for revocation and/or
10 denial of the license, as set forth in paragraph 6, above.

11 **SECOND CAUSE FOR DENIAL**

12 **(Acts Warranting Revocation of Licensure: Bureau of Automotive Repair Accusation case
13 no. 79/13-58)**

14 17. Respondent's application is subject to denial pursuant to sections 4301, subdivision
15 (p), and 480, subdivisions (a)(3)(A), and (a)(3)(B), in conjunction with the California Code of
16 Regulations, title 16, sections 1769 and 1770, in that he committed acts while holding Advanced
17 Emission Specialist Technician License no. EA 145097, which are grounds for revocation and/or
18 denial of the license, as set forth in paragraph 7, above.

19 **THIRD CAUSE FOR DENIAL**

20 **(Acts Involving Dishonesty, Fraud, and Deceit: Bureau of Automotive Repair Accusation
21 case no. 79/11-30)**

22 18. Respondent's application is subject to denial pursuant to sections 4301, subdivision
23 (f), and 480, subdivisions (a)(2), (a)(3)(A), and (a)(3)(B), in conjunction with the California Code
24 of Regulations, title 16, sections 1769 and 1770, in that he committed acts involving dishonesty,
25 fraud, and deceit, as set forth in paragraph 6, above.

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1 **FOURTH CAUSE FOR DENIAL**

2 **(Acts Involving Dishonesty, Fraud, and Deceit: Bureau of Automotive Repair Accusation**
3 **case no. 79/13-58)**

4 19. Respondent's application is subject to denial pursuant to sections 4301, subdivision
5 (f), and 480, subdivisions (a)(2), (a)(3)(A), and (a)(3)(B), in conjunction with the California Code
6 of Regulations, title 16, sections 1769 and 1770, in that he committed acts involving dishonesty,
7 fraud, and deceit, as set forth in paragraph 7, above.

8 **FIFTH CAUSE FOR DENIAL**

9 **(Knowingly Making or Signing Any Certificate or Document That Falsely Represents the**
10 **Existence of Facts: Bureau of Automotive Repair Accusation case no. 79/11-30)**

11 20. Respondent's application is subject to denial pursuant to sections 4301, subdivision
12 (g), and 480, subdivisions (a)(2), (a)(3)(A), and (a)(3)(B), in conjunction with the California Code
13 of Regulations, title 16, sections 1769 and 1770, in that he knowingly made a certificate that
14 falsely represented the existence of facts, as set forth in paragraph 6, above.

15 **SIXTH CAUSE FOR DENIAL**

16 **(Knowingly Making or Signing Any Certificate or Document That Falsely Represents the**
17 **Existence of Facts: Bureau of Automotive Repair Accusation case no. 79/13-58)**

18 21. Respondent's application is subject to denial pursuant to sections 4301, subdivision
19 (g), and 480, subdivisions (a)(2), (a)(3)(A), and (a)(3)(B), in conjunction with the California Code
20 of Regulations, title 16, sections 1769 and 1770, in that he knowingly made a certificate that
21 falsely represented the existence of facts, as set forth in paragraph 7, above.

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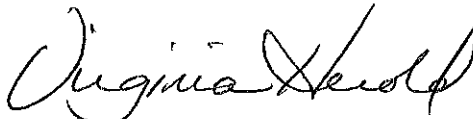
PRAYER

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

1. Denying the application of Scott Alan Miller for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: _____

9/10/18



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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