

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

**In the Matter of the Statement of Issues Against:**

**JESSIE LEON MCGEE, JR., Respondent**

**Pharmacy Technician Registration Applicant**

**Agency Case No. 6690**

**OAH No. 2019120139**

**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 29, 2020.

It is so ORDERED on June 29, 2020.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

Greg Lippe  
Board President

**BEFORE THE  
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**In the Matter of the Statement of Issues against:**

**JESSIE LEON McGEE, JR., Respondent**

**Agency No. 6690**

**OAH No. 2019120139**

**PROPOSED DECISION**

Matthew Goldsby, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on April 20, 2020, and conducted the hearing by telephone under Government Code section 11440.30.

Diana Petikyan, Deputy Attorney General, appeared by telephone and represented complainant Anne Sodergren, Executive Officer of the California Board of Pharmacy (Board).

Respondent Jessie Leon McGee, Jr., appeared by telephone and represented himself.

The record was held open for respondent to send complainant a copy of written character reference letters by April 27, 2020, and, after the opportunity to review the proposed evidence, for complainant to file the letters along with a written statement

of any objections by April 29, 2020. On April 28, 2020, complainant filed a written report that respondent informed her he was unable to obtain the desired character reference letters. Complainant's post-hearing filing was marked for identification as Exhibit 14.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on April 29, 2020.

## **FACTUAL FINDINGS**

### **Jurisdictional Facts**

1. On August 21, 2018, the Board received from respondent a Pharmacy Technician Application (Application). Respondent signed the Application under penalty of perjury on July 11, 2018.
2. The Board denied the Application on February 8, 2019. Respondent timely requested an administrative hearing to contest the denial of the Application.
3. On October 3, 2019, while acting in her official capacity, complainant filed the Statement of Issues.

### **Convictions**

4. On February 1, 2012, respondent entered a plea of nolo contendere and was convicted of possession of controlled substance paraphernalia in violation of Health and Safety Code section 11364, a misdemeanor. (*People v. McGee* (Sup. Ct. L.A. County, 2012, No. 2IG00580).) The court suspended the imposition of sentence and placed respondent on summary probation for 36 months with terms and conditions.

The court ordered respondent to serve three days in jail and to obey the law. The underlying circumstances of the conviction arose from an arrest on January 30, 2012, during which Inglewood police officers observed respondent smoking from a glass pipe and found respondent to be in possession of rock cocaine.

5. On December 19, 2007, respondent entered a plea of nolo contendere and was convicted of carrying a concealed dirk or dagger in violation of Penal Code section 12020, subdivision (a), a misdemeanor. (*People v. McGee* (Sup. Ct. L.A. County, 2007, No. 7W827375).) The court suspended the imposition of sentence and placed respondent on summary probation for 24 months with terms and conditions. The underlying circumstances of the conviction related to a traffic stop on December 17, 2007. During the stop, police officers recovered a tire puncture tool from respondent's pant pocket and a 6-inch serrated steak knife from the right pocket of his jacket.

6. On November 6, 2007, respondent entered a plea of nolo contendere and was convicted of attempted petty theft in violation of Penal Code section 664 – 484, subdivision (a), a misdemeanor. (*People v. McGee* (Sup. Ct. L.A. County, 2007, No. 7IG03582).) The court suspended the imposition of sentence and placed respondent on summary probation for 12 months with terms and conditions. The court ordered respondent to serve seven days in jail, to pay fines and fees totaling \$120, and to obey the law. The underlying circumstances of the conviction occurred during a period of time when respondent was unemployed. He attempted to leave a store without paying for clothes intended for his children, and was detained at the door before leaving the store premises.

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7. On June 12, 2007, respondent entered a plea of nolo contendere and was convicted of falsely identifying himself to a peace officer in violation of Penal Code section 148.9, subdivision (b), a misdemeanor. (*People v. McGee* (Sup. Ct. L.A. County, 2007, No. 6WA00428).) The court suspended the imposition of sentence and placed respondent on summary probation for 12 months with terms and conditions. The court ordered respondent to serve 18 days in jail, to pay fines and fees in the total amount of \$269, and to obey the law. The underlying circumstances of the conviction arose from an arrest on February 11, 2006. As they approached respondent, officers observed respondent discard an item on the ground next to his feet. One of the officers recovered "a glass narco pipe containing a substance resembling cocaine." (Ex. 5, p. 065.) When asked for his name, respondent provided his brother's name until he realized he was going to be booked, at which time he gave his real name.

### **Disclosures on Application**

8. Respondent certified under penalty of perjury that all statements, answers, and representations made in the Application were true and accurate, and acknowledged his understanding that the application may be denied for misrepresentation. The Application stated that the failure to provide any of the information in the Application would "result in an incomplete application and a deficiency letter being mailed to [respondent]." (Ex. 3, p. 041.)

9. The Application asked eight questions preceded by the statement: "You must provide a written explanation for all affirmative answers indicated below. Failure to do so may result in this application being deemed incomplete and being withdrawn." (Ex. 3, p. 042).

10. The eighth and last question on the Application was:

Have you ever been convicted of, or pleaded guilty or nolo contendere/no contest to, any crime, in any state, the United States or its territories, a military court, or any foreign country?

(Ex. 3, p. 042.)

11. The Application instructed and explained: "Include any felony or misdemeanor offense, and any infraction involving drugs or alcohol with a fine of \$500 or more. You must disclose a conviction even if it was: (1) later dismissed or expunged pursuant to Penal Code section 1203.4 et seq., or an equivalent release from penalties and disabilities provision from a non-California jurisdiction, or later dismissed or expunged pursuant to Penal Code section 1210 et seq., or an equivalent postconviction drug treatment diversion dismissal provision from a non-California jurisdiction. Failure to answer truthfully and completely may result in the denial of your application." (Ex. 3, p. 042.)

12. The Application further warned in bold typeface, "The failure to disclose a disciplinary action or conviction may result in the license being denied or revoked for falsifying the application." (Ex. 3, p. 042.)

13. Respondent answered section eight affirmatively, and disclosed only that he was arrested in February 2017 for a "wet reckless" violation. (Ex. 3, p. 042.) In a written statement to the Board, respondent furnished additional details as follows:

. . . that evening I had two beers at a restaurant with friends and left the restaurant an hour after consuming them. I was

told that waiting at least an hour after consuming beers was an appropriate time frame during my time in the Army. After leaving the restaurant I was pulled over by a peace officer who saw me leaving the restaurant/bar and given field sobriety tests of [*sic*] which I passed. When presented with the breathalyzer test I declined it and optioned for the blood test instead. I thought the blood test would prove to be more accurate. Which I later learned was my mistake.

The legal limit is .08 BAC and I was at 0.10 BAC. I took the blood test at least one and a half hours AFTER I was first pulled over by the peace officer. Had I taken the breathalyzer test at the scene where I took the sobriety tests I would have been well under the legal limit. This is because as the body processes alcohol over time the blood alcohol level rises.

Being that I am a military veteran of good standing military discharge, and in addition to this being my first such offense, I qualified for veteran's court. This program falls under California Penal Code 1001.80 PC for military diversion. Under the rules of this program once I complete the requirements of the court (AA meetings, and drug classes) the violation will be completely removed from my record as if they never occurred. I anticipate my completion will be in early to mid-October 2018.

(Ex. 3, p. 044, emphasis in original.)

14. Respondent did not furnish the Board with any information or explanation relating to any of the four convictions described at Factual Findings 4 through 7. At the hearing, respondent testified that he failed to disclose those convictions because he was informed and believed that he was only required to disclose convictions within the preceding seven years before the date of the Application, and that he “just wasn’t thinking beyond that.” In determining the credibility of a witness, the administrative law judge may consider any matter that has any tendency in reason to prove or disprove the truthfulness of the witness’s testimony at the hearing. (Evid. Code, § 780.) Respondent’s testimony is not credible for the following reasons. The Application is written in clear and unambiguous language, contained numerous warnings that the failure to give truthful and accurate responses could result in the denial of the Application, and is devoid of any language that would reasonably lead an applicant to believe the required disclosure was limited to the prior seven years. Moreover, respondent’s most recent conviction on February 1, 2012, was within seven years of the date of his Application signed under penalty of perjury on July 11, 2018. The weight of the evidence tends to show that respondent deliberately withheld material information concerning his criminal record.

### **Other Considerations**

15. Sheryl Ross Hustana, a Board Inspector for the past two years and a licensed pharmacist since 1985, testified credibly on behalf of the Board that pharmacy technicians are charged with the responsibility of dispensing dangerous drugs and controlled substances, that they have direct access to confidential patient information, that a pharmacist-in-charge “cannot possibly keep a constant eye on a pharmacy technician” during the course of employment, and that trust and good judgment are essential attributes of a pharmacy technician.



16. Inspector Hustana further testified that respondent's criminal record gives rise to concerns that respondent may repeat the occurrences of poor judgment and alcohol abuse, and that any such repeated conduct would pose a substantial risk of harm to the public.

17. Complainant pled as an aggravating circumstance that, on September 17, 2015, Los Angeles County Sheriffs conducted a traffic stop and observed a glass pipe used to smoke rock cocaine on the floorboard of respondent's vehicle. Respondent was arrested and charged with possession of drug paraphernalia.

### **Mitigation and Rehabilitation**

18. Respondent is a veteran of the United States military and was a pharmacy technician intern at Edwards Air Force Base. There is no evidence that he was subject to discipline for misconduct during his internship. He is currently enrolled at Antelope Valley College.

19. Respondent attended a drug rehabilitation program from 2008 to 2010. He returned to the program in 2012, but only for approximately three months. He testified that after his 2012 conviction, he no longer needed to take drugs or alcohol, and that he attended some Alcoholics Anonymous meetings, but only as part of the court ordered diversion program and to "do the song and dance."

### **LEGAL CONCLUSIONS**

1. In a hearing to determine whether a license should be granted or issued, the applicant must show compliance with the statutes and rules governing the license by producing proof at the hearing. (Gov. Code, § 11504; *Coffin v. Department of*

*Alcoholic Beverage Control* (2006) 139 Cal.App.4th 471, 475) The standard of proof upon the applicant for a license is a preponderance of the evidence. (Evid. Code, § 115.)

2. The Board may deny a license on the grounds that the applicant has been convicted of a crime. (Bus. & Prof. Code, § 480, subd. (a)(1).) To deny a license, the crime must be substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. (Bus. & Prof. Code, § 490, subd. (a).) A crime or act is considered substantially related to the qualifications, functions or duties of a licensee if to a substantial degree it evidences present or potential unfitness of a licensee to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare. (Cal. Code Regs. tit. 16, § 1770.)

3. The Board may deny a license on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license. (Bus. & Prof. Code, § 480, subd. (d).)

4. The Board may deny a license if (A) the applicant has done any act that would be grounds for discipline if done by a licensee and (B) the act is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made. (Bus. & Prof. Code, § 480, subd. (a)(3).)

5. Unprofessional conduct is an act that would be grounds for discipline if done by a licensed pharmacy technician. (Bus. & Prof. Code, § 4301.) Unprofessional conduct includes, but is not limited to, any of the following:

a) 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. (Bus. & Prof. Code, §4301, subd. (f).)

b) The self-administration of any controlled substance, or the use of any dangerous drug or alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a licensee, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license. (Bus. & Prof. Code, §4301, subd. (h).)

c) The violation of any state or federal law regulating controlled substances and dangerous drugs. (Bus. & Prof. Code, §4301, subd. (j).)

d) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensed pharmacy technician. (Bus. & Prof. Code, §4301, subd. (l).)

e) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter 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. (Bus. & Prof. Code, §4301, subd. (o).)

f) Actions or conduct that would have warranted denial of a license. (Bus. & Prof. Code, §4301, subd. (p).)

6. In this case, respondent was convicted of multiple crimes involving drugs and alcohol, or theft and dishonesty. These crimes, as well as the underlying acts relating to the arrests in 2015 and 2017 for similar misconduct, are substantially

related to the qualifications, functions and duties of a licensee because the underlying conduct evidences to a substantial degree a present or potential unfitness to perform the functions authorized by a pharmacy technician license in a manner consistent with the public health, safety, or welfare. Respondent's criminal record would be grounds to discipline a licensed pharmacy technician because the convictions and underlying acts are evidence of unprofessional conduct.

7. Cause exists to deny the Application under Business and Professions Code sections 480, subdivisions (a)(1) and (d), and 4301, subdivisions (f), (h), (j), (l), (o), and (p).

8. In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.), the Board must consider the disciplinary guidelines entitled "Disciplinary Guidelines," as revised in February 2017 (Guidelines). Deviation from the Guidelines, including the standard terms of probation, is appropriate where the board, in its sole discretion, determines that the facts of the particular case warrant such a deviation, such as the presence of mitigating factors, the age of the case, and evidentiary problems. (Cal. Code Regs., tit. 16, § 1760.)

9. When considering the denial of a personal license under Business and Professions Code section 480, and in evaluating the rehabilitation of respondent and his present eligibility for licensing, the Board must consider the following criteria: (1) The nature and severity of the acts or offenses under consideration as grounds for denial; (2) evidence of any acts committed subsequent to the acts or crimes under consideration as grounds for denial; (3) the time that has elapsed since commission of the acts or offenses; (4) whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant;

and (5) any evidence of rehabilitation submitted by the applicant. (Cal. Code Regs., tit. 16, § 1769, subd. (b).)

10. In this case, the nature of respondent's acts was criminal, dangerous, and dishonest. There is no evidence that any of the convictions have been expunged after respondent's compliance and satisfaction with the probationary terms by the courts. Respondent failed to produce any character reference letters to support his Application. Nor did he produce any corroborating evidence, such as documentation from a substance abuse or mental health professional, of his progress in refraining from using controlled substances illegally and the likelihood that he will continue to do so.

11. To respondent's credit, three of the four convictions occurred in 2007, approximately 11 years before the date of the Application. The most recent conviction was in 2012, more than six years before the date of the Application. Notwithstanding the arrests in 2015 and 2017, respondent has no criminal conviction since February 1, 2012. Courts have found that "the evidentiary significance of . . . misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct." (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

12. Nonetheless, any diminished risk of a recurrence of respondent's past criminal conduct is overshadowed by his more recent act of deceit by deliberately withholding material information from his Application. Honesty and truthfulness are qualities that bear on one's fitness and qualification to be a licensee. (*Golde v. Fox* (1979) 98 Cal.App.3d 167.) The Application respondent signed advised him that the failure to disclose required information could result in the denial of his Application and, despite these warnings, respondent failed to make a complete and accurate disclosure of his criminal record.

13. Because a pharmacy technician is responsible for dispensing dangerous drugs and controlled substances, and is entrusted with financial, personal, and confidential information about clients, the evidence of dishonest and deceptive behavior to achieve a goal negates all other evidence of rehabilitation and mitigation.

14. Respondent has failed to establish by a preponderance of the evidence that he is entitled to a pharmacy technician license. The denial of this Application is warranted in the interest of public health and safety.

## ORDER

The application of Jessie Leon McGee, Jr., for a pharmacy technician license is denied.

DATE: May 4, 2020

MA { DocuSigned by:  
*Matthew Goldsby*  
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Administrative Law Judge  
Office of Administrative Hearings

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

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

Case No. 6690

17  
18  
19 **STATEMENT OF ISSUES**

20 **PARTIES**

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

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

28 ///

1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Board under the authority of the  
3 following laws. All section references are to the Business and Professions Code unless otherwise  
4 indicated.

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

7 **STATUTORY PROVISIONS**

8 5. Section 480 states, in pertinent part:

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

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

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

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

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

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

23 (c) Notwithstanding any other provisions of this code, a person shall not be  
24 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  
25 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.

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



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

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

5 7. Section 4301 states, in pertinent part:

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

8 ....

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

11 .....

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

15 .....

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

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

28 ....

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

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

### 7 **REGULATORY PROVISIONS**

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

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

### 16 **CONTROLLED SUBSTANCE**

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

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

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

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

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

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

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

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

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

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

11 **PRAYER**

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

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

17  
18 DATED: October 3, 2019



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

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