

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

In the Matter of the Statement of Issues Against:

JONATHAN PAUL GARCIA, Respondent

Pharmacy Technician Registration Applicant

Agency Case No. 6849

OAH No. 2020010977

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 October 8, 2020.

It is so ORDERED on September 8, 2020.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Greg Lippe
Board President

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Respondent.

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PROPOSED DECISION

Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on June 1, 2020, and conducted the hearing by telephone and video conference under Government Code section 11440.30.

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

Respondent Jonathan Paul Garcia appeared and represented himself.

The record was held open until July 7, 2020, for complainant to submit a redacted version of her exhibits, for respondent to submit drug test results (marked for

identification as Exhibits M-P), and for complainant to submit a response thereto (marked for identification as Exhibit 11.) Complainant did not object to the admission of Exhibits M through P, and they were admitted into evidence.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 7, 2020.

FACTUAL FINDINGS

Jurisdictional Facts

1. On December 24, 2018, the Board received from respondent a Pharmacy Technician Application (Application). Respondent signed the Application under penalty of perjury on December 17, 2018.

2. The Board denied the Application on August 20, 2019. Respondent timely requested an administrative hearing to contest the denial of the Application.

3. On December 3, 2019, while acting in her official capacity, complainant filed the Statement of Issues.

Convictions

4. On December 5, 2011, respondent entered a plea of guilty and was convicted of possession of controlled substance paraphernalia in violation of Health and Safety Code section 11364, subdivision (a), a misdemeanor. (*People v. Garcia* (Sup. Ct. Los Angeles County, 2011, No. 1 PY01797).) The court sentenced Respondent to serve 15 days in jail.

5. On December 5, 2011, respondent entered a plea of nolo contendere and was convicted of possession of a controlled substance in violation of Health and Safety Code section 11377, subdivision (a), a misdemeanor. (*People v. Garcia* (Sup. Ct. Los Angeles County, 2011, No. 1PY06368).) The court sentenced respondent to serve 90 days in jail and placed him on 24 months' probation, with terms and conditions. The circumstances surrounding the conviction are that on November 14, 2011, Respondent was placed under arrest by Los Angeles Police Department officers for an outstanding warrant. During a search of respondent, an officer found a small baggie containing a crystal-like substance resembling methamphetamine¹ inside his wallet.

6. On June 28, 2016, respondent entered a plea of nolo contendere and was convicted of petty theft in violation of Penal Code sections 484, subdivision (a), and 490.2, subdivision (a), a misdemeanor. (*People v. Garcia* (Sup. Ct. Los Angeles County, 2016, No. 6VW03083).) The court sentenced Respondent to serve 45 days in jail and placed him on 24 months' probation, with terms and conditions. The circumstances surrounding the conviction are that on June 22, 2016, respondent entered a Target store and selected two baby carriers from the baby department, placing one in a reusable Target bag and the other in the shopping cart. Respondent then proceeded to exit the store, passing all operational and manned registers, and failed to pay for the merchandise.

¹ Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

Testimony of Board Inspector

7. Valerie Sakamura, a Board Inspector for the past 20 years and a licensed pharmacist, 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.

8. Inspector Sakamura further testified that respondent's criminal record gives rise to concerns that respondent may repeat the occurrences of petty theft and drug abuse, and that any such repeated conduct would pose a substantial risk of harm to the public.

Respondent's Evidence

9. Respondent testified candidly at hearing and was moved to tears at times. Respondent is 32 years old. When respondent was still a teenager, he entered into a relationship with MP. He was with MP, now his ex-husband, for a decade. MP, who is bi-polar and schizophrenic, manipulated respondent. MP cut respondent off from his family and secluded him from friends, school, and employment. Respondent was not allowed to be away from MP and MP did not allow respondent to have a phone. MP abused respondent emotionally and physically, although respondent "didn't see it at the time." However, respondent recognizes that "actions have consequences" and respondent accepts full responsibility for his actions and expressed sincere remorse.

10. While respondent was in jail for 45 days following his June 28, 2016 petty theft conviction, he obtained his GED. Respondent is now seeking "a second chance at life." He has been clean and sober since September 15, 2017. He began the Pharmacy Technician program at CBD College in May 2018 and completed it in January 2019. "Pharmacy and a sober life are [respondent's] everything now." He would welcome the opportunity to receive a probationary license and "would do whatever it takes to be licensed."

11. Respondent no longer associates with his past contacts and he has ended his relationship with MP. Their divorce was finalized two months before the hearing. Respondent now has "the love of a good man" and has earned the trust of his family, classmates, teachers, and co-workers. He is sober and "would not give it up for anything in the world." Respondent has been attending both Alcoholics Anonymous (AA) meetings and Narcotics Anonymous (NA) meetings since April or May 2018. He continued attending meetings once his court-mandated requirement ended in August 2018. Respondent has done service for NA and AA. He has worked as a greeter and has helped with the newsletter. Until he began working, he attended NA or AA meetings once or twice per week, and now attends virtual meetings one to two times per month.

12. Respondent is very proud of the fact that he has "rewired" himself "to live a normal life." He has saved money, purchased a car, raised his credit score, and pays his rent on time. Respondent has successfully completed criminal probation for each conviction and intends to seek expungement. He has successfully maintained full-time employment as a clerk at Brentwood Pharmacy in Santa Monica, where he works six days per week. Respondent is proud that he has now spent three years correcting his mistakes, taking responsibility, and making good decisions.

13. Respondent has submitted to a number of drug screens and has tested negative each time. (Exhs. M-P.)

CHARACTER WITNESSES

14. Jenny Molina testified at hearing and prepared a character reference letter (Ex. F.) She has known respondent since 2017 when they attended Pharmacy Technician (PT) classes together for one year at CBD College. Ms. Molina has “nothing but great things to say” about respondent who served as a Student Ambassador for their class. The Student Ambassador represents the PT program at meetings and events and is chosen by students and faculty based upon grades and votes. Ms. Molina has seen respondent working with patients and others at a pharmacy. She observed him to be responsible and caring. Respondent candidly shared details of his past and his convictions with Ms. Molina, who found him to be “nothing like he was before.” At that time, she understands that he was “not stable,” was in an abusive relationship, and was under the influence of narcotics and alcohol. Now respondent wants to help others and “be better.”

15. Michelle Garcia testified at hearing and prepared a character reference letter (Ex. B.) Respondent is her younger brother. Respondent “got involved with the wrong people,” MP was a negative influence, and respondent spiraled downward. He has a new partner and respondent is “now a completely changed man.” Ms. Garcia is now “proud to say [respondent] is her brother.” Respondent attended NA and no longer uses controlled substances. He did not relapse even under the pressure of his father’s death and the recent death of Ms. Garcia’s husband. Ms. Garcia has watched respondent “grow,” has “all the confidence in the world” in him, and does not hesitate to leave her children in respondent’s care.

16. Dale Woods testified at the hearing and prepared a character reference letter (Ex. D.) Mr. Woods met respondent at a Starbucks on March 10, 2018. They are engaged to be married in August 2020. Respondent was very open with Mr. Woods about his past and was "filled with remorse." Respondent was "very forthright" and "took full responsibility." He does not blame others, but respondent now recognizes he had been controlled and abused by his former partner. Respondent has been attending NA or AA weekly since April or May 2018 and has also been in therapy. He no longer uses drugs, nor does he have any drug paraphernalia. He, his adult son, and respondent reside together. Mr. Woods describes himself as "very straight-laced" and his son, who holds respondent in high regard, "would not stand for it" if drugs were being used. Respondent's family "is everything to him." His father had Parkinson's Disease and Chronic Obstructive Pulmonary Disease and took a lot of prescription medications, including pain medications. Respondent responsibly handled all of his father's prescriptions and worked with the hospice providers. Respondent's father died in his arms, and even that was not a trigger for respondent to relapse. "It wasn't even a consideration." Mr. Woods has observed that respondent has an impressive work ethic.

17. Respondent submitted 12 character reference letters from family members, classmates, college officials, and work colleagues who are fully aware of respondent's convictions and this licensing proceeding. (Exhs. A-L.) The writers praise respondent for his compassion, honesty, reliability, trustworthiness, and work ethic. Gerald R. Hamwi, M.D., is respondent's primary care physician. Dr. Hamwi writes that he has observed respondent's substance abuse recovery, strongly supports his application for licensure as a Pharmacy Technician, and does not believe respondent poses a threat of drug diversion. (Ex. K.) N. Miller, LCSW, respondent's psychotherapist, describes him as "empathic and sensitive to the needs of customers, conscientious and

detail-oriented in his approach to the technical aspects of his work, and collegial and cooperative as a team member of any staff of which he is a member.” (Ex. L.)

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).)

3. The Board may discipline a license on the ground that the licensee has been convicted of a crime if the crime is 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.)

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 has suffered three convictions involving drug possession, possession of drug paraphernalia, and petty theft. These crimes, as well as the underlying acts, 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 respondent's application under Business and Professions Code section 480, subdivision (a)(1), in that respondent has been convicted of crimes substantially related to the qualifications, functions or duties of a pharmacy technician, as set forth in Factual Findings 4 through 6.

8. Cause exists to deny respondent's application under Business and Professions Code section 480, subdivision (a)(2), in that on June 22, 2016, respondent committed acts involving dishonesty, fraud, or deceit with the intent to substantially benefit himself, or substantially injure another, as set forth in Factual Finding 6.

9. Cause exists to deny respondent's application under Business and Professions Code section 480, subdivisions (a)(3)(A), and (a)(3)(B), in that respondent committed acts which if done by a licentiate of the business and profession in question, would be grounds for suspension or revocation of his license as follows:

a. Respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a pharmacy technician which to a substantial degree evidences his present or potential unfitness to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare, in violation of Business and Professions Code sections 4301, subdivision (l) and 490, in conjunction with California Code of Regulations, title 16, section 1770, as set forth in Factual Findings 4 through 6.

b. On June 22, 2016, Respondent committed acts involving moral turpitude, dishonesty, fraud, or deceit in violation of Business and Professions Code section 4301, subdivision (f), as set forth in Factual Finding 6.

c. Respondent was found to be in possession of a controlled substance, in violation of Business and Professions Code section 4301, subdivisions (j) and (o), as set forth in Factual Findings 5 and 6.

10. 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," 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.)

11. 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).)

12. In this case, respondent's acts were criminal and dishonest. The convictions have not been expunged, but respondent successfully completed probation for each of the convictions. Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that an individual did not commit additional crimes while on probation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) However, respondent has successfully maintained his sobriety and has continued to demonstrate exemplary behavior well after the end of his probation term.

13. Respondent brought strong supporting evidence from sources other than himself. He submitted 12 character reference letters from college officials, colleagues, classmates, and family members in support of his licensure. In addition, three character witnesses testified at hearing and strongly support his Application. Evidence from outside sources lends credibility or substance to respondent's own testimony of rehabilitation. "Favorable testimony of acquaintances, neighbors, friends, associates and employers with reference to their observation of the daily conduct and mode of living" can be helpful in determining whether a person seeking licensure is rehabilitated. (See, *In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309, 317 – 318.)

14. To respondent's credit, he showed insight into his behavior, accepted full responsibility for his convictions, expressed sincere remorse, and made no attempt to minimize his actions. Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.)

15. Respondent's most recent conviction occurred more than four years ago and the two earlier convictions occurred more than eight years ago. There was no evidence of any subsequent contacts with law enforcement. 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.)

16. There is a diminished risk of a recurrence of respondent's past criminal conduct. Respondent has maintained his sobriety for nearly three years. He continues to participate in 12-step programs and psychotherapy. He has cut off all associations with previous contacts and has a strong support system in his family and his fiancé.

17. A pharmacy technician is responsible for dispensing dangerous drugs and controlled substances, and is entrusted with financial, personal, and confidential information about clients. Evidence of previous drug use and dishonest conduct for self-benefit is of concern. The statutes relating to licensing of professions generally are designed to protect the public from dishonest, untruthful, and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) Administrative actions regarding a state-issued license are not for the primary purpose of punishing an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) Rather, in issuing and disciplining licenses, a

state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (*Ibid*, see also *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.)

18. Complainant recommended issuing a license to respondent, immediately revoking it, and placing it on probation for four years with enumerated terms and conditions (Ex. 11.) Imposition of the recommended terms and a probationary period is deemed appropriate in this matter. However, in light of the rehabilitation and mitigation established by respondent, a two year term of probation will adequately protect public health and safety.

ORDER

Upon satisfaction of all statutory and regulatory requirements for issuance of a Pharmacy Technician license, a Pharmacy Technician license shall be issued to Jonathan Paul Garcia and immediately revoked; the order of revocation is stayed and respondent's Pharmacy Technician license is placed on probation for two 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, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state or federal agency which involves respondent's license or which 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 6849 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 6849, 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 6849, 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 6849, 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 6849, 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/Suspension

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 Resuming 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 80 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 number 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.

14. Examination

If required by the Board, respondent shall take and pass the Pharmacist Technician Certification Board (PTCB) Examination again within 12 months of the effective date of this decision. If respondent fails to take and pass the examination within 12 months of the effective of this decision, respondent shall be automatically suspended from practice. Respondent shall bear all costs of the examination(s) required by the board.

During any suspension, respondent shall not enter any pharmacy area or any portion of the 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 practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent

manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or dangerous devices and controlled substances.

During any suspension, respondent shall not engage in any activity that requires licensure as a pharmacy technician.

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

If required by the Board, failure to take and pass the examination(s) within twelve (12) months of the effective date of this decision shall be considered a violation of probation.

If respondent fails to take and pass the PTCB examination after four attempts, respondent shall successfully complete additional units of pharmacy technician education as approved by the board. Respondent shall complete the coursework, and submit proof of completion satisfactory to the board or its designee, within three (3) months of the fourth failure of the examination. Failure to complete coursework or provide proof of such completion as required shall be considered a violation of probation.

15. Drug and Alcohol Testing

Respondent, at his own expense, shall participate in testing as directed by the board or its designee for the detection of alcohol, controlled substances, and dangerous drugs and/or dangerous devices. Testing protocols may include biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other testing protocols as directed by the board or its designee. All testing must be pursuant to an observed

testing protocol, unless respondent is informed otherwise in writing by the board or its designee. Respondent may be required to participate in testing for the entire probation period and frequency of testing will be determined by the board or its designee.

By no later than thirty (30) days after the effective date of this decision, respondent shall have completed all of the following tasks: enrolled and registered with an approved drug and alcohol testing vendor; provided that vendor with any documentation, and any information necessary for payment by respondent; commenced testing protocols, including all required contacts with the testing vendor to determine testing date(s); and begun testing. At all times, respondent shall fully cooperate with the testing vendor, and with the board or its designee, with regard to enrollment, registration, and payment for, and compliance with, testing. Any failure to cooperate timely shall be considered a violation of probation.

Respondent may be required to test on any day, including weekends and holidays. Respondent is required to make daily contact with the testing vendor to determine if a test is required, and if a test is required must submit to testing on the same day.

Prior to any vacation or other period of absence from the area where the approved testing vendor provides services, respondent shall seek and receive approval from the board or its designee to use an alternate testing vendor to ensure testing can occur. Upon approval, respondent shall enroll and register with the approved alternate drug testing vendor, provide to that alternate vendor any documentation required by the vendor, including any necessary payment by respondent. During the period of absence of the area, respondent shall commence testing protocols with the alternate

vendor, including required daily contacts with the testing vendor to determine if testing is required, and required testing. Any failure to timely seek or receive approval from the board or its designee, or to timely enroll and register with, timely commence testing protocols with, or timely undergo testing with, the alternate testing vendor, shall be considered a violation of probation.

Upon detection of an illicit drug, controlled substance or dangerous drug, the board or its designee may require respondent to timely provide documentation from a licensed practitioner authorized to prescribe the detected substance demonstrating that the substance was administered or ingested pursuant to a legitimate prescription issued as a necessary part of treatment. All such documentation shall be provided by respondent within ten (10) days of being requested.

Any of the following shall be considered a violation of probation and shall result in respondent being immediately suspended from practice as a Pharmacy Technician until notified by the board in writing that he may resume practice: failure to timely complete all of the steps required for enrollment/registration with the drug testing vendor, including making arrangements for payment; failure to timely commence drug testing protocols; failure to contact the drug testing vendor as required to determine testing date(s); failure to test as required; failure to timely supply documentation demonstrating that a detected substance was taken pursuant to a legitimate prescription issued as a necessary part of treatment; and/or detection through testing of alcohol, or of an illicit drug, or of a controlled substance or dangerous drug absent documentation that the detected substance was taken pursuant to a legitimate prescription and a necessary treatment. In the event of a suspension ordered after detection through testing of alcohol, an illicit drug, or of a controlled substance or dangerous drug absent documentation that the detected substance was taken

pursuant to a legitimate prescription and a necessary treatment, the board or its designee shall inform respondent of the suspension and inform him to immediately leave work, and shall notify respondent's employer(s) and work site monitor(s) of the suspension.

During any such suspension, respondent shall not enter any pharmacy area or any portion of the 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 practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or dangerous devices and controlled substances.

During any such suspension, respondent shall not engage in any activity that requires the professional judgment of and/or licensure as a Pharmacy Technician. Respondent shall not direct or control any aspect of the practice of pharmacy, or of the manufacturing, distributing, wholesaling, or retailing of dangerous drugs and/or dangerous devices.

Failure to comply with any such suspension shall be considered a violation of probation. Failure to comply with any requirement or deadline stated by this term shall be considered a violation of probation.

16. Notification of Departure

Prior to leaving the probationary geographic area designated by the board or its designee for a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation of probation.

17. Abstain from Drugs and Alcohol

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, illicit drugs, dangerous drugs and/or dangerous devices, or their associated paraphernalia, except when possessed or used pursuant to a legitimate prescription issued as a necessary part of treatment. Respondent shall ensure that he is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, dangerous drugs and/or dangerous devices or controlled substances, or their associated paraphernalia for which a legitimate prescription has not been issued as a necessary part of treatment, or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

18. Prescription Coordination and Monitoring of Prescription Use

Within thirty (30) days of the effective date of this decision, respondent shall submit to the board, for its prior approval, the name and qualifications of a single physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's history with the use of alcohol, illicit drugs, controlled substances, and/or dangerous drugs, and who will coordinate and monitor any prescriptions for respondent for dangerous drugs and/or dangerous devices,

controlled substances or mood-altering drugs. The approved practitioner shall be provided with a copy of the board's Statement of Issues and decision. A record of this notification must be provided to the board or its designee upon request.

Respondent shall sign a release authorizing the practitioner to communicate with the board or its designee about respondent's treatment(s). The coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to the board on a quarterly basis for the duration of probation regarding respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances. The board or its designee may require that the single coordinating physician, nurse practitioner, physician assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive medicine. Should respondent, for any reason, cease supervision by the approved practitioner, respondent shall notify the board or its designee immediately and, within thirty (30) days of ceasing supervision, submit the name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice to the board or its designee for its prior approval. Failure to timely submit the selected practitioner or replacement practitioner to the board or its designee for approval, or to ensure the required quarterly reporting thereby, shall be considered a violation of probation.

If at any time an approved practitioner determines that respondent is unable to practice safely or independently as a Pharmacy Technician, the practitioner shall notify the board or its designee immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the board or its designee of this determination, respondent shall be automatically suspended and shall not resume

practice as a Pharmacy Technician until notified by the board or its designee that practice may be resumed.

During any suspension, respondent shall not enter any pharmacy area or any portion of the 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 practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or dangerous devices and controlled substances. Respondent shall not resume practice until notified by the board.

During any suspension, respondent shall not engage in any activity that requires the professional judgment and/or licensure as a Pharmacy Technician. Respondent shall not direct or control any aspect of the practice of pharmacy or of the manufacturing, distributing, wholesaling, or retailing of dangerous drugs and/or dangerous devices or controlled substances.

Failure to comply with any requirement or deadline stated by this term shall be considered a violation of probation.

19. **Work Site Monitor**

Within ten (10) days of the effective date of this decision, respondent shall identify a work site monitor, for prior approval by the board or its designee, who shall

be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the board monthly or on another schedule as directed by the board or its designee. Should the designated work site monitor suspect at any time during the probationary period that respondent has abused alcohol or drugs, he or she shall notify the board immediately.

In the event of suspected abuse, the monitor shall make at least oral notification within one (1) business day of the occurrence, and shall be followed by written notification within two (2) business days of the occurrence. If, for any reason, including change of employment, respondent is no longer able to be monitored by the approved work site monitor, within ten (10) days respondent shall designate a new work site monitor for approval by the board or its designee. Failure to timely identify an acceptable initial or replacement work site monitor, or to ensure monthly reports are submitted to the board by the monitor, shall be considered a violation of probation.

Within thirty (30) days of being approved by the board or its designee, the work site monitor shall sign an affirmation that he or she has reviewed the terms and conditions of respondent's disciplinary order and agrees to monitor respondent. The work site monitor shall at least:

- 1) Have regular face-to-face contact with respondent in the work environment, at least once per week or with greater frequency if required by the board or its designee;
- 2) Interview other staff in the office regarding respondent's behavior, if applicable; and

3) Review respondent's work attendance.

The written reports submitted to the board or its designee by the work site monitor shall include at least the following information: respondent's name and license number; the monitor's name, license number (if applicable) and work site location; the date(s) the monitor had face-to-face contact with respondent; the staff interviewed, if applicable; an attendance report; notes on any changes in respondent's behavior or personal habits; notes on any indicators that may lead to substance abuse; and the work site monitor's signature.

Respondent shall complete the required consent forms and sign an agreement with the work site monitor and the board to allow the board to communicate with the work site monitor.

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20. **No Ownership or Management of Licensed Premises**

Respondent shall not own, have any legal or beneficial interest in, nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

DATE: August 6, 2020

DocuSigned by:
Laurie Pearlman
LAURIE R. PEARLMAN

Administrative Law Judge

Office of Administrative Hearings

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7 *Attorneys for Complainant*

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

12 In the Matter of the Statement of Issues
13 Against:

Case No. 6849

14 **JONATHAN PAUL GARCIA**

STATEMENT OF ISSUES

15 Pharmacy Technician Registration Applicant

16 Respondent.

17
18 **PARTIES**

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

22 2. On or about December 24, 2018, the Board received an application for a Pharmacy
23 Technician Registration from Jonathan Paul Garcia (Respondent). On or about December 17,
24 2018, Respondent certified under penalty of perjury to the truthfulness of all statements, answers,
25 and representations in the application. The Board denied the application on August 20, 2019.

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1 **JURISDICTION**

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

5 **STATUTORY PROVISIONS**

6 4. Section 480 states, in pertinent part:

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

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

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

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

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

17 (b) Notwithstanding any other provision of this code, a person shall not be
18 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
19 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
20 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.

21 (c) Notwithstanding any other provisions of this code, a person shall not be
22 denied a license solely on the basis of a conviction that has been dismissed pursuant
to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a
23 conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of
the Penal Code shall provide proof of the dismissal.

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

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

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

4 6. Section 4301 states, in pertinent part:

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

7

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

10

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

13

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

24

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

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1 **REGULATORY PROVISIONS**

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

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

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

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

11 **FIRST CAUSE FOR DENIAL OF APPLICATION**

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

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

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

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

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

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

12 **SECOND CAUSE FOR DENIAL OF APPLICATION**

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

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

19 **THIRD CAUSE FOR DENIAL OF APPLICATION**

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

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

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

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

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

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

10 **PRAYER**

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

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

16
17 DATED: December 3, 2019



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

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