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

12 In the Matter of the Statement of Issues Against:

Case No. 3193

13 SOMER ANNE SCHREIBER
14 3515 I Street
Eureka, California 95503

STATEMENT OF ISSUES

15 Applicant for Pharmacy Technician Registration

16 Applicant/Respondent.

17
18 Complainant alleges:

19 PARTIES

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

23 2. On or about December 18, 2006, the Board of Pharmacy, Department of
24 Consumer Affairs received an application for a Pharmacy Technician's License from Somer
25 Anne Schreiber, Applicant/Respondent(hereafter "Applicant"). On or about November 15,
26 2006, Somer Anne Schreiber certified under penalty of perjury to the truthfulness of all
27 statements, answers, and representations in the application. The Board denied the application on
28 September 4, 2007.

JURISDICTION

1
2 3. This Statement of Issues is brought before the Board of Pharmacy (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code (hereafter "Code") unless otherwise
5 indicated.

6 4. Section 4300 of the Code states in relevant part that:

7 ...

8 (c) The board may refuse a license to any applicant guilty of unprofessional
9 conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a
10 license who is guilty of unprofessional conduct and who has met all other requirements for
11 licensure. The board may issue the license subject to any terms or conditions not contrary to
12 public policy, including, but not limited to, the following:

- 13 (1) Medical or psychiatric evaluation.
- 14 (2) Continuing medical or psychiatric treatment.
- 15 (3) Restriction of type or circumstances of practice.
- 16 (4) Continuing participation in a board-approved rehabilitation program.
- 17 (5) Abstention from the use of alcohol or drugs.
- 18 (6) Random fluid testing for alcohol or drugs.
- 19 (7) Compliance with laws and regulations governing the practice of pharmacy.

20 (d) The board may initiate disciplinary proceedings to revoke or suspend any
21 probationary certificate of licensure for any violation of the terms and conditions of probation.

22 Upon satisfactory completion of probation, the board shall convert the probationary certificate to
23 a regular certificate, free of conditions.

24 (e) The proceedings under this article shall be conducted in accordance with
25 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code,
26 and the board shall have all the powers granted therein. The action shall be final, except that the
27 propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the
28 Code of Civil Procedure.

1 5. Section 4301 of the Code states in relevant part that unprofessional
2 conduct shall include, but is not limited to, any of the following:

3 ...

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

7 ...

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

25 ...

26 6. Section 480 of the Code states:

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

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

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

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

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

14 7. Section 493 of the Code states:

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

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

26 8. California Code of Regulations, title 16, section 1770, states, that, for the
27 purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division
28 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be

1 considered substantially related to the qualifications, functions or duties of a licensee or
2 registrant if to a substantial degree it evidences present or potential unfitness of a licensee or
3 registrant to perform the functions authorized by her license or registration in a manner consistent
4 with the public health, safety, or welfare.

5 FACTUAL BACKGROUND

6 9. On or about March 10, 1999, in the criminal court proceeding entitled
7 *People of California vs. Somer Anne Schreiber*, Superior Court of California, Humboldt County,
8 Eureka Division, Case No. CR983117S, applicant Somer Schreiber was convicted of having
9 violated California Penal Code section 594(b)(4) (vandalism), a misdemeanor. The Court
10 sentenced the applicant to 2 years probation, 10 days jail with 8 days of jail, sentence suspended,
11 and ordered her to pay fines. On or about May 22, 2008, the Court granted the applicant's
12 motion pursuant to Penal Code section 1203.4

13 10. On or about June 25, 1999, in the criminal court proceeding entitled
14 *People of California vs. Somer Anne Schreiber*, Superior Court of California, Humboldt County,
15 Eureka Division, Case No. CR9910393S, the applicant was convicted of having violated
16 California Penal Code section 242 (assault), a misdemeanor. The Court sentenced the applicant
17 to 2 years of probation, 20 days in jail, imposition of sentence suspended, and payment of fines.
18 On or about May 22, 2008, the Court granted the applicant's motion pursuant to Penal Code
19 section 1203.4

20 11. On or about April 5, 2000, in the criminal court proceeding entitled
21 *People of California vs. Somer Anne Schreiber*, Superior Court of California, Humboldt County,
22 Eureka Division, Case No. CR000109S, the applicant was convicted by her plea of guilty for
23 having violated section 10980(c)(2) of the California Welfare and Institutions Code (welfare
24 fraud), a felony. On or about May 22, 2000, the Court sentenced the applicant to formal
25 probation for 3 years and ordered to complete 200 hours of community service work. The Court
26 also ordered the applicant to pay a restitution fine of \$4,470.00 pursuant to Penal Code section
27 1202.4(f), an additional restitution fine of \$600.00 pursuant o Penal Code section 1202.45, and
28 administrative fees pursuant to Penal Code section 1214.5. Further, the Court allowed that, with

1 full restitution, the applicant's felony conviction would be reduced to a misdemeanor. On or
2 about May 14, 2008, the Court reduced the applicant's felony conviction to a misdemeanor
3 pursuant to Penal Code section 17 and granted the applicant's motion pursuant to Penal Code
4 section 1203.4.

5 12. On or about August 9, 2001, in the criminal court proceeding entitled
6 *People of California vs. Somer Anne Schreiber*, Superior Court of California, Humboldt County,
7 Eureka Division, Case No. CR003773S, the applicant was convicted by her plea of guilty for
8 having violated California Penal Code section 476A(a) (making or delivering check(s) with
9 insufficient funds), a misdemeanor. The Court ordered the imposition of the sentence suspended,
10 and sentenced the applicant to conditional revocable release for 3 years with conditions for
11 probation to include payment of restitution in the amount of \$1,294.71. On or about May 22,
12 2008, the Court granted the applicant's motion pursuant to Penal Code section 1203.4

13 FIRST CAUSE FOR DENIAL OF APPLICATION

14 (Conviction of Substantially Related Crimes)

15 13. Applicant Somer Schreiber's application is subject to denial under section
16 480(a)(1) and 480(a)(3) of the Code, pursuant to Code sections 493, 4301(1); and/or 4300(c) by
17 reference to 4301(1) as well as by reference to Title 16, California Code of Regulations, section
18 1770, in that, as set forth in paragraphs 8, 9, 10, and 11, above, the applicant was convicted of
19 crimes substantially related to the qualifications, functions or duties of the license sought.

20 SECOND CAUSE FOR DENIAL OF APPLICATION

21 (Violation of Laws)

22 14. Applicant Somer Schreiber's application is subject to denial under Code
23 section 480(a)(3), by reference to section 4301(f), and/or Code section 4300(c) by reference to
24 4301(f), in that, as described in paragraphs 8, 9, 10, and 11, above, the applicant violated laws
25 regarding vandalism, assault, welfare fraud, and making or delivering checks with insufficient
26 funds.

27 PRAYER

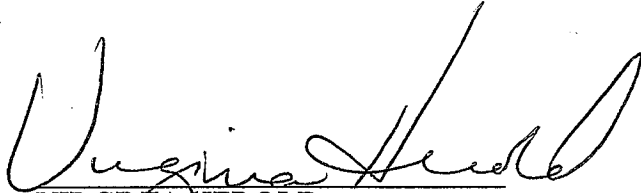
28 WHEREFORE, Complainant requests that a hearing be held on the matters herein

1 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

2 A. Denying the application of Somer Anne Schreiber for registration as a
3 Pharmacy Technician;

4 B. Taking such other and further action as deemed necessary and proper.

5
6 DATED: 12/29/08



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

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