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9		RE THE PHARMACY
10	DEPARTMENT OF C	CONSUMER AFFAIRS CALIFORNIA
11		
12	In the Matter of the First Amended Statement of Issues Against:	Case No. 3445
13	COLLEGE PHARMACY	
14	3505 Austin Bluffs Pkwy., Ste. 101 Colorado Springs, CO 80918	FIRST AMENDED STATEMENT OF ISSUES
15	Respondent.	
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17	Complainant alleges:	
18	<u>PAR</u>	TIES
19	1. Virginia Herold (Complainant) bring	s this First Amended Statement of Issues solely
20	in her official capacity as the Executive Officer of	of the Board of Pharmacy, Department of
21	Consumer Affairs.	
22	2. On or about December 24, 2008, the	Board of Pharmacy, Department of Consumer
23	Affairs, received an application for a Nonresiden	t Pharmacy Permit from College Pharmacy
24	(Respondent). On or about December 2, 2008, F	achel Christopher, on behalf of College
25	Pharmacy, certified under penalty of perjury to the	he truthfulness of all statements, answers, and
26	representations in the application. The Board de	nied the application on May 27, 2009.
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1	3. On or about March 19, 2009, the Board of Pharmacy, Department of Consumer	
2	Affairs, also received an application for a Nonresident Sterile Injectable Compounding Pharmac	y
3	Permit from Respondent College pharmacy. This application is deemed denied pursuant to the	
4	First Amended Statement of Issues filed herein.	
5	JURISDICTION	
6	4. This First Amended Statement of Issues is brought before the Board of Pharmacy	
7	(Board), Department of Consumer Affairs, under the authority of the following laws. All section	n
8	references are to the Business and Professions Code (Code) unless otherwise indicated.	
9	5. Section 4300, subdivision (c), of the Code states:	
10	(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any	
11	applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to	
12	any terms or conditions not contrary to public policy, including, but not limited to, the following	
13		
14	STATUTORY PROVISIONS	
15	6. Section 4301 of the Code states:	
16	The board shall take action against any holder of a license who is guilty of	
17	unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include,	
18	but is not limited to, any of the following:	
19	(n) The revocation, suspension, or other discipline by another state of a	
20	license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter.	
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23	7. Section 480 of the Code states:	
24	(a) A board may deny a license regulated by this code on the grounds that	
25	the applicant has one of the following:	
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1	(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of
2	license.
3	(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
4	the business or profession for which application is made.
5	••••
6	8. Section 482 of the Code states:
7	
8	Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:
9	(a) Considering the denial of a license by the board under Section 480; or
10 11	(b) Considering suspension or revocation of a license under Section 490.
12	Each board shall take into account all competent evidence of rehabilitation
12	furnished by the applicant or licensee.
13	9. Section 4313 of the Code states:
15	In determining whether to grant an application for licensure or whether to discipling or reinstate a license, the heard shall give some identical to write
16	discipline or reinstate a license, the board shall give consideration to evidence of rehabilitation. However, public protection shall take priority over
17	rehabilitation and, where evidence of rehabilitation and public protection are in conflict, public protection shall take precedence.
18	
19	REGULATIONS
20	10. California Code of Regulations, Title 16, Section 1769, states:
21	(a) When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the
22	rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:
23	(1) The nature and severity of the act(s) or offense(s) under consideration
24	as grounds for denial.
25	(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.
26	(3) The time that has elapsed since commission of the act(s) or crime(s)
27	referred to in subdivision (1) or (2).
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(4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

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

## FIRST CAUSE FOR DENIAL OF APPLICATION

## (Discipline By Another State- Colorado)

11. Respondent's applications are subject to denial under Code sections 480, subdivision
(a)(3)(A), and 4300, subdivision (c), in conjunction with Section 4301, subdivision (n), in that
Respondent was disciplined by another state. The circumstances are as follows:

a. On or about April 7, 2004, in Case No. 2004-838, the Colorado State Board of
Pharmacy and Respondent entered into a stipulation whereby discipline was imposed upon
Respondent, including assessment of a \$1,000 fine. The discipline arose from Respondent failing
to timely notify the state pharmacy board of a change of its pharmacist manager.

b. On or about December 21, 2005, in Case No. 2005-0002, the Colorado State Board of
Pharmacy and Respondent entered into a stipulation whereby discipline was imposed upon
Respondent, including assessment of a \$50,000 fine. The discipline arose because pharmacists
employed by Respondent dispensed prescriptions to a practitioner's office under employee
names, rather than under a specific patient's name; because pharmacists employed by Respondent
failed to list the patient's address on three prescription orders; and because Respondent did not
have specific compounding records for a prescription order.

c. On or about December 18, 2007, in Case No. 2008-569, the Colorado State Board of
Pharmacy and Respondent entered into a stipulation whereby discipline was imposed upon
Respondent, including assessment of a \$250,000 fine. The discipline arose because in or about
2004 through 2007, Respondent allegedly sold or distributed human growth hormone (hGH)
imported from China in the United States that had not been approved by the United States Food
and Drug Administration (FDA). Although Respondent stipulated to the discipline, it did not
make admissions and denied the charges.

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1	d. On or about April 10, 2009, in Case Nos. 2008-569, 2009-639 and 2009-1779, the
2	Colorado State Board of Pharmacy and Respondent entered into a stipulation whereby discipline
3	was imposed upon Respondent, including 7 years probation. The discipline arose because in or
4	about April 2008, Respondent purchased hGH, a controlled substance under Colorado law, from a
5	source that was not a registered prescription drug wholesaler in the State of Colorado; because in
6	or about March 2008, Respondent received a prescription order from and sold hGH to a
7	veterinarian in Illinois where the veterinarian was listed as both the prescribing practitioner and
8	the patient; and because these actions violated the prior stipulation entered into between
9	Respondent and the Colorado State Board of Pharmacy in Case No. 2008-569.
10	SECOND CAUSE FOR DENIAL OF APPLICATION
11	(Discipline By Another State- Arizona)
12	12. Respondent's applications are subject to denial under Code sections 480, subdivision
13	(a)(3)(A), and 4300, subdivision (c), in conjunction with Section 4301, subdivision (n), in that
14	Respondent was disciplined by another state. The circumstances are as follows:
15	a. On or about May 14, 2008, in Case No. 08-0044-PHR, the Arizona State Board of
16	Pharmacy and Respondent entered into a stipulation whereby discipline was imposed upon
17	Respondent, including 7 years probation, based upon the discipline imposed by the Colorado
18	State Board of Pharmacy in December 2007 in Case No. 2008-569 (see First Cause for Denial
19	above).
20	THIRD CAUSE FOR DENIAL OF APPLICATION
21	(Discipline By Another State-Missouri)
22	13. Respondent's applications are subject to denial under Code sections 480, subdivision
23	(a)(3)(A), and 4300, subdivision (c), in conjunction with Section 4301, subdivision (n), in that
24	Respondent was disciplined by another state. The circumstances are as follows:
25	a. On or about May 28, 2008, the Missouri State Board of Pharmacy issued Respondent
26	a pharmacy permit whereby discipline was imposed upon Respondent, including 3 years
27	probation, based upon the discipline imposed by the Colorado State Board of Pharmacy in
28	December 2007 in Case No. 2008-569 (see First Cause for Denial above).
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FIRST AMENDED STATEMENT OF ISSUES

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## FOURTH CAUSE FOR DENIAL OF APPLICATION

## (Discipline By Another State- Indiana)

14. Respondent's applications are subject to denial under Code sections 480, subdivision
(a)(3)(A), and 4300, subdivision (c), in conjunction with Section 4301, subdivision (n), in that
Respondent was disciplined by another state. The circumstances are as follows:

a. As the result of filing a federal criminal action (Criminal Action No. 07-cr-00338MSK), the United States indicted Respondent College Pharmacy in 2007. The basis of the
criminal indictment was that while under ownership of Thomas Bader, Respondent allegedly sold
and distributed human growth hormones illegally in the United States between 2004 and 2007. In
August 2008, the United States, in a substantially related case (Civil Action No. 08-cv-01790MSK), filed a complaint in federal civil court against Respondent for forfeiture *in rem* and for a
permanent injunction based upon its alleged distribution of the human growth hormone (hGH).

b. Pursuant to a consent decree, and without contesting the allegations, the federal 13 criminal and civil cases were resolved with Respondent in September 2008, when Respondent 14 15 agreed to entry of a permanent injunction whereby it would, *inter alia*, refrain from introducing into interstate commerce hGH other than hGH that is contained in a FDA approved drug product, 16 dispensed pursuant to a patient-specific prescription, and for approved uses only as determined by 17 the Secretary of Health and Human Services or the FDA. In addition, Respondent agreed to a 18 forfeiture judgment against it in the amount of 3.5 million to the United States. The federal 19 criminal action was subsequently dismissed without prejudice as to Respondent. 20

c. In or about 2007, Respondent submitted an application to the Indiana Board of 21 Pharmacy to renew its registration as a nonresident pharmacy. On January 17, 2008, the Indiana 22 Board of Pharmacy sent Respondent a letter denying the application based on "the information 23 regarding the current federal indictment being reviewed by the Colorado federal Grand Jury." 24 Respondent appealed the denial, and an administrative hearing was held. On or about May 7, 25 2009, in Case No. 2008 IBP 0009, as a result of the administrative hearing, the Indiana Board of 26 27 Pharmacy issued Respondent a nonresident pharmacy registration, but placed Respondent on 28 probation.

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1	PRAYER	
2	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,	
3	and that following the hearing, the Board of Pharmacy issue a decision:	
4	1. Denying the applications of College Pharmacy for a Nonresident Pharmacy Permit	
5	and for a Nonresident Sterile Injectable Compounding Pharmacy Permit;	
6	2. Taking such other and further action as deemed necessary and proper.	
7	DATED: 6/3/10 Vieinie Aced	
8	VIRGINIA HEROLD	
9	Executive Officer Board of Pharmacy	
10	Department of Consumer Affairs State of California	
11	Complainant	
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	FIRST AMENDED STATEMENT OF ISSUES	

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