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

11 In the Matter of the First Amended Statement
12 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 PARTIES

19 1. Virginia Herold (Complainant) brings this First Amended Statement of Issues solely
20 in her official capacity as the Executive Officer 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 Nonresident Pharmacy Permit from College Pharmacy
24 (Respondent). On or about December 2, 2008, Rachel Christopher, on behalf of College
25 Pharmacy, certified under penalty of perjury to the truthfulness of all statements, answers, and
26 representations in the application. The Board denied the application on May 27, 2009.

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

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

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7 8. Section 482 of the Code states:

8 Each board under the provisions of this code shall develop criteria to
9 evaluate the rehabilitation of a person when:

10 (a) Considering the denial of a license by the board under Section 480; or

11 (b) Considering suspension or revocation of a license under Section 490.

12 Each board shall take into account all competent evidence of rehabilitation
13 furnished by the applicant or licensee.

14 9. Section 4313 of the Code states:

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

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
22 Section 480 of the Business and Professions Code, the board, in evaluating the
rehabilitation of the applicant and his present eligibility for licensing or
23 registration, will consider the following criteria:

24 (1) The nature and severity of the act(s) or offense(s) under consideration
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
26 and Professions Code.

27 (3) The time that has elapsed since commission of the act(s) or crime(s)
referred to in subdivision (1) or (2).
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1 (4) Whether the applicant has complied with any terms of parole,
2 probation, restitution or any other sanctions lawfully imposed against the
3 applicant.

4 (5) Evidence, if any, of rehabilitation submitted by the applicant.
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7 **FIRST CAUSE FOR DENIAL OF APPLICATION**

8 **(Discipline By Another State- Colorado)**

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

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

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

23 c. On or about December 18, 2007, in Case No. 2008-569, the Colorado State Board of
24 Pharmacy and Respondent entered into a stipulation whereby discipline was imposed upon
25 Respondent, including assessment of a \$250,000 fine. The discipline arose because in or about
26 2004 through 2007, Respondent allegedly sold or distributed human growth hormone (hGH)
27 imported from China in the United States that had not been approved by the United States Food
28 and Drug Administration (FDA). Although Respondent stipulated to the discipline, it did not
make admissions and denied the charges.

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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PRAYER

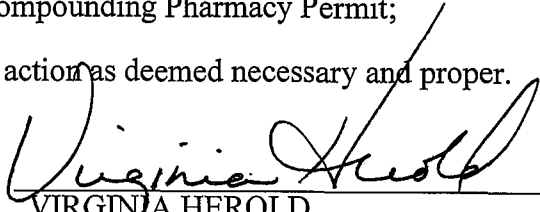
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Denying the applications of College Pharmacy for a Nonresident Pharmacy Permit and for a Nonresident Sterile Injectable Compounding Pharmacy Permit;

2. Taking such other and further action as deemed necessary and proper.

DATED:

6/3/10



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

SD2009804663