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

11 In the Matter of the Statement of Issues
Against:

Case No. 3454

13 **STUART H. GOLDFINE**
14 **4 Via Campo**
Rancho Mirage, CA 92270

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 21 2. On or about January 27, 2009, the Board of Pharmacy, Department of Consumer
22 Affairs received an application for registration as a pharmacy technician from Stuart H. Goldfine
23 (Respondent). On or about December 26, 2008, Stuart H. Goldfine certified under penalty of
24 perjury to the truthfulness of all statements, answers, and representations in the application. The
25 Board denied the application on May 27, 2009.

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1 **JURISDICTION**

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 unless otherwise indicated.

5 4. Section 4300 (c) of the Code states:

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

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

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20 5. Section 477 of the Code states:

21 As used in this division:

- 22 (a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,'
23 'division,' 'examining committee,' 'program,' and 'agency.'
- 24 (b) 'License' includes certificate, registration or other means to engage in a
25 business or profession regulated by this code.

26 **STATUTORY PROVISIONS AND REGULATIONS**

27 6. Section 475 of the Code states, in pertinent part:

28 "(a) Notwithstanding any other provisions of this code, the provisions of this division shall
govern the denial of licenses on the grounds of:

"

"(3) Commission of any act involving dishonesty, fraud or deceit with the
intent to substantially benefit himself or another, or substantially injure another.

1 "(4) Commission of any act which, if done by a licentiate of the business or
2 profession in question, would be grounds for suspension or revocation of license.

3 "...."

4 7. Section 480 of the Code states, in pertinent part:

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

7

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

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

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

15

16 8. Section 4301 of the Code states, in pertinent part:

17 The board shall take action against any holder of a license who is guilty of
18 unprofessional conduct or whose license has been procured by fraud or
19 misrepresentation or issued by mistake. Unprofessional conduct shall include, but
20 is not limited to, any of the following:

21

22 (b) Incompetence.

23 (c) Gross negligence.

24 (d) The clearly excessive furnishing of controlled substances in violation of
25 subdivision (a) of Section 11153 of the Health and Safety Code.

26 (e) The clearly excessive furnishing of controlled substances in violation of
27 subdivision (a) of Section 11153.5 of the Health and Safety Code. Factors to be
28 considered in determining whether the furnishing of controlled substances is
clearly excessive shall include, but not be limited to, the amount of controlled
substances furnished, the previous ordering pattern of the customer (including size
and frequency of orders), the type and size of the customer, and where and to
whom the customer distributes its product.

(f) 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.

(g) Knowingly making or signing any certificate or other document that
falsely represents the existence or nonexistence of a state of facts.

....

(i) Except as otherwise authorized by law, knowingly selling, furnishing,
giving away, or administering or offering to sell, furnish, give away, or administer
any controlled substance to an addict.

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

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

7
8 9. Section 482 of the Code states:

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

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

12 "....

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

15 10. California Code of Regulations, title 16, section 1769, states, in pertinent part:

16 (a) When considering the denial of a facility or personal license under
17 Section 480 of the Business and Professions Code, the board, in evaluating the
18 rehabilitation of the applicant and his present eligibility for licensing or
19 registration, will consider the following criteria:

20 (1) The nature and severity of the act(s) or offense(s) under consideration as
21 grounds for denial.

22 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
23 under consideration as grounds for denial under Section 480 of the Business and
24 Professions Code.

25 (3) The time that has elapsed since commission of the act(s) or crime(s)
26 referred to in subdivision (1) or (2).

27 (4) Whether the applicant has complied with any terms of parole, probation,
28 restitution or any other sanctions lawfully imposed against the applicant.

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

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

 For the purpose of denial, suspension, or revocation of a personal or facility
 license pursuant to Division 1.5 (commencing with Section 475) of the Business
 and Professions Code, a crime or act shall be considered substantially related to
 the 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.

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1 DRUGS

2 12. **Demerol or Demerol HCl**, a brand name for meperedine hydrochloride, is a
3 Schedule II controlled substance as designated by Health and Safety Code Section 11055(b), and
4 is a dangerous drug pursuant to Business and Professions Code section 4022. Meperidine is a
5 narcotic pain reliever similar to morphine and used to treat moderate-to-severe pain

6 FACTS

7 13. On February 18, 1965 the Board issued Original Pharmacist License Number RPH
8 23864 to Respondent, Stuart H. Goldfine. On October 19, 1993, Accusation No. 1701 was filed
9 against Respondent's license. A stipulated revocation of Respondent's license was entered into
10 on August 23, 1994, in which Respondent admitted to the truth and accuracy of each and every
11 fact and allegation contained in Accusation No. 1701 including the facts and allegations set forth
12 below:

13 a. Respondent was the sole proprietor and pharmacist-in-charge of a pharmacy located
14 in Cathedral City, California.

15 b. Between October 1987 and September 1989, Respondent filled injectable Demerol
16 prescriptions and various other controlled substance prescriptions for client, R.E.

17 c. Between May 1989 and September 1989, Respondent dispensed 3870 ml of injectable
18 Demerol to R.E.

19 d. On June 5, 1989, June 15, 1989 and June 21, 1989, Respondent dispensed 800 ml,
20 600 ml, and 600 ml, respectively, of injectable Demerol to R.E.

21 e. On July 5, 1989, July 12, 1989 and July 18, 1989, Respondent dispensed 60 ml, 100
22 ml, and 100 ml, respectively, of injectable Demerol to R.E.

23 f. Between November 1988 and June 1989, the quantity of injectable Demerol
24 dispensed by Respondent to R.E. increased from 60 ml to 600 ml for each prescription.

25 g. Between January 1, 1987 and May 31, 1991 Respondent wrote numerous
26 prescriptions for controlled substances, representing on the prescription forms that he was a "Dr."
27 or "M.D.", when he was not.
28

1 14. In the course of dispensing controlled substances and when writing prescriptions,
2 Respondent falsely stated that he was a medical doctor and intentionally or knowingly used the
3 DEA registration number of licensed medical doctor R.G.

4 15. The stipulated revocation was accepted by the Board on November 4, 1994 and
5 became effective on December 5, 1994.

6 16. The acts committed by Respondent in violation of the Code that led to the revocation
7 are as follows:

- 8 a) Respondent acted incompetently in violation of section 4301, subdivision (b), as
9 more particularly alleged in paragraphs 13 through 14, above, and incorporated by
10 this reference as though set forth in full herein.
- 11 b) Respondent engaged in acts of gross negligence in violation of section 4301
12 subdivision (c), as more particularly alleged in paragraphs 13 through 14, above,
13 and incorporated by this reference as though set forth in full herein.
- 14 c) Respondent excessively furnished controlled substances in violation of section
15 4301 subdivision (d) and subdivision (a) of section 11153 of the Health and
16 Safety Code, as more particularly alleged in paragraphs 13 through 14, above, and
17 incorporated by this reference as though set forth in full herein.
- 18 d) Respondent engaged in acts involving moral turpitude, dishonesty, fraud, deceit
19 or corruption in violation of section 4301 subdivision (f), as more particularly
20 alleged in paragraphs 13 through 14, above, and incorporated by this reference as
21 though set forth in full herein.
- 22 e) Respondent knowingly signed documents that falsely represented the existence of
23 a state of facts in violation of section 4301 subdivision (g), as more particularly
24 alleged in paragraphs 13 through 14, above, and incorporated by this reference as
25 though set forth in full herein.
- 26 f) Respondent knowingly sold, furnished, gave away or administered a controlled
27 substance to an addict in violation of section 4301 subdivision (i), as more
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particularly alleged in paragraphs 13 through 14, above, and incorporated by this reference as though set forth in full herein.

g) Respondent engaged in acts involving moral turpitude, dishonesty, fraud, deceit or corruption in violation of section 4301 subdivision (f), as more particularly alleged in paragraphs 13 through 14, above, and incorporated by this reference as though set forth in full herein

h) Respondent violated provisions of applicable federal and state laws governing pharmacy in violation of section 4301 subdivision (o), as more particularly alleged in paragraphs 13 through 14, above, and incorporated by this reference as though set forth in full herein.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct - Revocation of Pharmacist's License)

17. Respondent's application is subject to denial under Code sections 475(a)(4) and 480 (a)(3), in conjunction with section 4301, for committing various acts that if done by a licentiate would be grounds for revocation and did in fact lead to the revocation of Respondent's Pharmacist license as more particularly alleged in paragraphs 13 through 16, above and incorporated by this reference as though set forth in full herein.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Commission of Acts Involving Dishonesty, Fraud or Deceit)

18. Respondent's application is subject to denial under Code sections 475(a)(3) and 480(a)(2) in that Respondent committed acts involving dishonesty, fraud and deceit, as more particularly alleged in paragraphs 13 through 16, above and incorporated by this reference as though set forth in full herein.

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 application of Stuart H. Goldfine for a Pharmacy Technician Registration;

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

DATED: 6/9/10



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

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