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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. 3624

12
13 **BRIAN D. GOLDFINE**
73491 Sun Lane
14 Palm Desert, CA 92260

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 February 26, 2009, the Board of Pharmacy, Department of Consumer
22 Affairs received an application for registration as a pharmacy technician from Brian D. Goldfine
23 (Respondent). On or about February 12, 2009, Brian D. 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 January 7, 2010.

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27 ///

28 ///

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

2 ...

3 (c) A license shall not be denied, suspended, or revoked on the grounds of a lack
4 of good moral character or any similar ground relating to an applicant's character,
reputation, personality, or habits."

5 6. Section 480 of the Code states:

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

8 (1) Been convicted of a crime. A conviction within the meaning of this section
9 means a plea or verdict of guilty or a conviction following a plea of nolo
10 contendere. Any action that a board is permitted to take following the establishment
11 of a 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 of the Penal Code.

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

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

15 (B) The board may deny a license pursuant to this subdivision only if the crime or
16 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, no person shall be denied a
18 license solely on the basis that he or she has been convicted of a felony if he or she
19 has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with
20 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
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

22 7. Section 4301 of the Code states:

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

26 ...

27 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit,
28 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.

1 ...
2 (j) The violation of any of the statutes of this state or of the United States
3 ...
4 ...
5 (l) The conviction of a crime substantially related to the qualifications, functions,
6 and duties of a licensee under this chapter. The record of conviction of a violation
7 of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
8 regulating controlled substances or of a violation of the statutes of this state
9 regulating controlled substances or dangerous drugs shall be conclusive evidence of
10 unprofessional conduct. In all other cases, the record of conviction shall be
11 conclusive evidence only of the fact that the conviction occurred. The board may
12 inquire into the circumstances surrounding the commission of the crime, in order to
13 fix the degree of discipline or, in the case of a conviction not involving controlled
14 substances or dangerous drugs, to determine if the conviction is of an offense
15 substantially related to the qualifications, functions, and duties of a licensee under
16 this chapter. A plea or verdict of guilty or a conviction following a plea of nolo
17 contendere is deemed to be a conviction within the meaning of this provision. The
18 board may take action when the time for appeal has elapsed, or the judgment of
19 conviction has been affirmed on appeal or when an order granting probation is made
20 suspending the imposition of sentence, irrespective of a subsequent order under
21 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
22 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
23 dismissing the accusation, information, or indictment.

14 ...
15 ...
16 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
17 abetting the violation of or conspiring to violate any provision or term of this
18 chapter or of the applicable federal and state laws and regulations governing
19 pharmacy, including regulations established by the board....

18 8. Code section 4324 provides in part:

19 (a) Every person who signs the name of another, or of a fictitious person, or
20 falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as
21 genuine, any prescription for any drugs is guilty of forgery and upon conviction
22 thereof shall be punished by imprisonment in the state prison, or by imprisonment in
23 the county jail for not more than one year. . . .

22 9. Section 490 of the Code provides, in pertinent part, that a board may suspend or
23 revoke a license on the ground that the licensee has been convicted of a crime substantially
24 related to the qualifications, functions, or duties of the business or profession for which the
25 license was issued.

26 10. Section 493 of the Code states:

27 Notwithstanding any other provision of law, in a proceeding conducted by a board
28 within the department pursuant to law to deny an application for a license or to

1 suspend or revoke a license or otherwise take disciplinary action against a person
2 who holds a license, upon the ground that the applicant or the licensee has been
3 convicted of a crime substantially related to the qualifications, functions, and duties
4 of the licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in
order to fix the degree of discipline or to determine if the conviction is substantially
related to the qualifications, functions, and duties of the licensee in question.

5 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
6 'registration.'

7 11. Title 16, of the California Code of Regulations, section 1770, defines "substantially
8 related" as follows:

9 For the purpose of denial, suspension, or revocation of a personal or facility
10 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
11 Professions Code, a crime or act shall be considered substantially related to the
12 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.

13 12. Section 482 of the Code states:

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

- 16 (a) Considering the denial of a license by the board under Section 480; or
17 (b) Considering suspension or revocation of a license under Section 490.

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

20 13. Title 16, of the California Code of Regulations, section 1769 sets forth the following
21 factors to consider with regard to evidence of rehabilitation:

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

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

28 (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.

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

(4) Whether the applicant has complied with any terms of parole, probation,

1 restitution or any other sanctions lawfully imposed against the applicant.

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

3 14. Health and Safety Code section 11173 provides:

4 (a) No person shall obtain or attempt to obtain controlled substances, or procure or
5 attempt to procure the administration of or prescription for controlled substances,
6 (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a
7 material fact.

8 (b) No person shall make a false statement in any prescription, order, report, or
9 record, required by this division.

10 (c) No person shall, for the purpose of obtaining controlled substances, falsely
11 assume the time of, or represent himself to be, a manufacturer, wholesaler,
12 pharmacist, physician, dentist, veterinarian, registered nurse, physician's assistant or
13 other authorized person.

14 (d) No person shall affix any false or forged label to a package or receptacle
15 containing controlled substances.

12 DRUGS

13 15. **Norco**, a brand name for hydrocodone with acetaminophen, is a dangerous drug
14 pursuant to Business and Professions Code section 4022, and a Schedule III controlled substance
15 as designated by Health and Safety Code section 11056(e)(4).

16 FIRST CAUSE FOR DENIAL OF APPLICATION

17 **(Unprofessional Conduct - Discipline by Medical Board)**

18 16. Respondent's application is subject to denial under Code section 4300, subdivision
19 (c), for unprofessional conduct in that while Respondent was licensed by the Medical Board of
20 California, his license was disciplined by the Medical Board.

21 17. The circumstances are as follows. On March 4, 1998, Accusation Number 09-96-
22 66061 was filed by the Executive Director of the Medical Board of California with the Division
23 of Medical Quality. At all times relevant to Accusation Number 09-96-66061 and since October
24 22, 1991, Respondent was licensed by the Medical Board of California under Physician's and
25 Surgeon's Certificate No. A 50067. Accusation Number 09-96-66061 charged Respondent with
26 gross negligence, incompetence and repeated negligent acts in his care and treatment of several
27 patients during their hospitalization at Eisenhower Medical Center.

1 18. On November 5, 1998, Respondent entered into a Stipulated Settlement in which he
2 admitted to most of the allegations of Accusation Number 09-96-66061 and admitted that he was
3 guilty of repeated negligent acts in violation of Business and Professions Code section 2234(c).
4 The Stipulated Settlement was adopted as the Decision and Order of the Division of Medical
5 Quality, Medical Board of California, on December 8, 1998 and became effective on January 7,
6 1999. As a result of the Decision and Order, Respondent's Physician's and Surgeon's Certificate
7 No. A 50067 was revoked however, revocation was stayed and Respondent was placed on
8 probation for five years with terms and conditions, including, completion of an intensive training
9 program pursuant to the Physician Assessment and Clinical Education Program ("PACE"), the
10 monitoring of Respondent's practice by another physician approved by the Medical Board and
11 obedience to all federal, state and local laws.

12 19. On April 15, 2002, Ron Joseph, in his capacity as the Executive Director of the
13 Medical Board of California, filed Petition to Revoke Probation Number D1-1996-66061 against
14 Respondent for failing to comply with the terms of probation. The Petition to Revoke Probation
15 was served on Respondent by the Medical Board staff on May 21, 2002 and subsequently
16 received a return receipt card from the U.S. Postal Service indicating Respondent received and
17 signed for the Petition to Revoke Probation, and accompanying documents, on May 24, 2002.
18 When Respondent failed to timely file a Notice of Defense, the probation granted in Accusation
19 Number 09-96-66061 was revoked and Physician's and Surgeon's Certificate No. A 50067 was
20 likewise revoked, effective on September 26, 2002.

21 **SECOND CAUSE FOR DENIAL OF APPLICATION**

22 **(August 12, 2004 Conviction of Forging Prescriptions on or about October 15, 2002)**

23 20. Respondent's application is subject to denial under Code sections 480(a)(1) and
24 480(a)(3), in conjunction with section 4301(l), for conviction of a crime that is substantially
25 related to the qualifications, functions and duties of a registered pharmacy technician in that on
26 August 12, 2004, in *People of the State of California v. Brian David Goldfine*, Riverside County
27 Superior Court-Indio, Case Number INF042609, Respondent was convicted on his guilty plea of
28 violation of Business and Professions Code section 4324, forging prescriptions, a felony.

1 revoked, as set forth in paragraphs 19 and 20 above, which are incorporated by this reference as
2 though set forth in full herein.

3 **SIXTH CAUSE FOR DENIAL OF APPLICATION**

4 **(October 25, 2004 Conviction of Furnishing a Controlled Substance on September 13, 2003)**

5 26. Respondent's application is subject to denial under Code sections 480(a)(1) and
6 480(a)(3) in conjunction with section 4301(l) for conviction of a crime that is substantially related
7 to the qualifications, functions and duties of a registered pharmacy technician in that on October
8 25, 2004, in *People of the State of California v. Brian David Goldfine*, San Diego County
9 Superior Court-Central Judicial District, Case Number CD184330, Respondent was convicted on
10 his guilty plea of violation of Health and Safety Code section 11352(a), furnishing a controlled
11 substance, Norco, by prescribing it without a license to do so.

12 27. As a result of Respondent's conviction, he was placed on probation for three years,
13 ordered to the custody of the Sheriff for one day, ordered to pay fines and fees of \$420, ordered to
14 perform 150 hours of volunteer work and ordered not to practice medicine or issue prescribed
15 medications unless duly licensed.

16 **SEVENTH CAUSE FOR DENIAL OF APPLICATION**

17 **(Commission of an Act Involving Dishonesty, Fraud, or Deceit on or about Sept. 13, 2003)**

18 28. Respondent's application is subject to denial under Code sections 480(a)(2) and
19 480(a)(3), in conjunction with section 4301(f), for commission of an act involving dishonesty,
20 fraud or deceit in that Respondent pled guilty to, and was convicted of, prescribing Norco, a
21 controlled substance, without a license to do so, as set forth in full in paragraph 22 above and
22 incorporated by this reference as though set forth in full herein.

23 **EIGHTH CAUSE FOR DENIAL OF APPLICATION**

24 **(Commission of Acts in Violation of Pharmacy Law on Sept. 13, 2003-Forgery of**
25 **Prescription)**

26 29. Respondent's application is subject to denial under Code sections 480(a)(3), in
27 conjunction with section 4301(o) for violation of Section 4324 in that Respondent forged
28

1 prescriptions for Norco as set forth in paragraph 26 above, which is incorporated by this reference
2 as though set forth in full herein.

3 **NINTH CAUSE FOR DENIAL OF APPLICATION**

4 **Commission of Acts in Violation of Law on Sept. 13, 2003-Fraud, Deceit)**

5 30. Respondent's application is subject to denial under Code sections 480(a)(3), in
6 conjunction with section 4301(j) in violation of Health and Safety Code section in that
7 Respondent made false statements in prescriptions for Norco wherein he falsely assumed the title
8 of, or represented himself to be, a physician when his license to practice medicine had been
9 revoked, as set forth in paragraphs 19 and 26 above, which are incorporated by this reference as
10 though set forth in full herein.

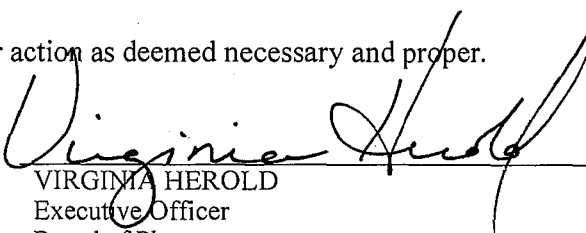
11 **PRAYER**

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

14 1. Denying the application of Brian D. Goldfine for registration as a pharmacy
15 technician; and,

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

17 DATED: 5/6/10

18 
19 VIRGINIA HEROLD
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant

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