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

12 In the Matter of the Statement of Issues
13 Against:

Case No. 4045

14 **JEMMA DEBRA MOLE**
15 **36202 Corsica Circle**
Winchester, CA 92596

STATEMENT OF ISSUES

16
17 Respondent.

18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about January 14, 2010, the Board of Pharmacy, Department of Consumer
23 Affairs received an application for a Pharmacy Technician Registration from Jemma Debra Mole
24 (Respondent). On or about January 7, 2010, Jemma Debra Mole certified under penalty of
25 perjury to the truthfulness of all statements, answers, and representations in the application. The
26 Board denied the application on December 20, 2010.

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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 of the Code states:

6 "....

7 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The
8 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
9 guilty of unprofessional conduct and who has met all other requirements for licensure."

10 **STATUTORY PROVISIONS**

11 5. Section 475 of the Code states:

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

14 "....

15 "(2) Conviction of a crime.

16 "....

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

19 "(b) Notwithstanding any other provisions of this code, the provisions of this division shall
20 govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2)
21 of subdivision (a) .

22 "...."

23 6. Section 480 of the Business and Professions Code provides, in pertinent part, that a
24 board may deny a license if the applicant has been convicted of a crime substantially related to
25 the qualifications, functions or duties of the business or profession for which application is made,
26 has committed any act involving dishonesty, fraud or deceit, has committed any act which if done
27 by a licentiate would be grounds for suspension or revocation of a license, or has knowingly made
28 a false statement of fact required to be revealed in the application.

1 7. Section 482 of the Code states:

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

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

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

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

8 8. Section 493 of the Code states:

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

18 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
19 'registration.'"

20 9. Section 4301 of the Code states:

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

24 ". . . .

25 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
26 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
27 oneself, to a person holding a license under this chapter, or to any other person or to the public, or

28

1 to the extent that the use impairs the ability of the person to conduct with safety to the public the
2 practice authorized by the license.

3 “....

4 "(k) The conviction of more than one misdemeanor or any felony involving the use,
5 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
6 combination of those substances.

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

24 “....”

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1 **REGULATORY PROVISIONS**

2 10. California Code of Regulations, title 16, section 1769, states:

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

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

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

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

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

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

15 “. . . .”

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

17 "For the purpose of denial, suspension, or revocation of a personal or facility license
18 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
19 crime or act shall be considered substantially related to the qualifications, functions or duties of a
20 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
21 licensee or registrant to perform the functions authorized by his license or registration in a manner
22 consistent with the public health, safety, or welfare."

23 **FIRST CAUSE FOR DENIAL OF APPLICATION**

24 **(July 28, 2006 Criminal Convictions for DUI on May 28, 2006)**

25 12. Respondent's application is subject to denial under section 480, subdivisions (a)(1)
26 and (a)(3)(A), and section 4301, subdivision (l) of the Code in that she was convicted of a crime
27 substantially related to the qualifications, functions, and duties of a licensee. The circumstances
28 are as follows:

1 Respondent back up, trip, and fall to the ground near the parking structure. The officer walked to
2 Respondent and asked her for her identification. Respondent said she was 20 years old and was
3 on probation for a DUI. Respondent could not remember her home address or social security
4 number. She was then arrested.

5 **THIRD CAUSE FOR DENIAL OF APPLICATION**

6 **(May 21, 2009 Criminal Conviction for DUI on February 11, 2009)**

7 19. Respondent's application is subject to denial under section 480, subdivisions (a)(1)
8 and (a)(3)(A), and section 4301, subdivision (l) of the Code in that she was convicted of a crime
9 substantially related to the qualifications, functions, and duties of a licensee. The circumstances
10 are as follows:

11 20. On or about May 21, 2009, in a criminal proceeding entitled *People v. Jemma Debra*
12 *Amanda Mole*, in Riverside County Superior Court, case number SWM084665, Respondent was
13 convicted on her plea of guilty of violating Vehicle Code section 23152, subdivision (b), driving
14 with a BAC of .08% or more, a misdemeanor. Respondent also admitted and the court found true
15 the allegation that at the time of the offense she had a previous DUI. An additional count of
16 violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, a
17 misdemeanor, was dismissed pursuant to a plea agreement.

18 21. As a result of the conviction, on or about May 21, 2009, Respondent was sentenced to
19 48 months summary probation and ordered to be committed to the custody of the Riverside
20 County Sheriff for ten days and pay fines and fees.

21 22. The facts that led to the conviction are that on or about February 11, 2009, at
22 approximately 1:30 a.m., an officer with the Riverside County Sheriff's Office responded to a
23 traffic accident in San Jacinto. Someone reported seeing a white car in a field off the road. The
24 officer arrived on the scene and saw a white Mitsubishi Lancer stopped approximately forty yards
25 into the dirt field off the road. The front driver side door was open and Respondent was leaning
26 against the car, next to the open door. Respondent stood motionless and did not answer the
27 officer's questions about her health or how her car ended up in the field. Eventually, Respondent
28 said she was not hurt. The officer had Respondent walk from her car to the road to talk.

1 Respondent said drove and thought the field was a shortcut to another road as she was on her way
2 to a friend's house in Hemet. The officer smelled alcohol on her breath and her person.
3 Respondent's speech was slow and her eyes were red and watery. When the officer asked
4 Respondent about her alcohol consumption, she began to cry and said, "I already have a DUI and
5 a drunk in public, please don't arrest me." The officer asked Respondent to perform several field
6 sobriety tests, which she failed. Respondent agreed to take a preliminary test of her BAC. The
7 results of the first test were .218% BAC and the results of the second test were .231% BAC.
8 Based on her statements and her inability to perform the field sobriety tests, the officer arrested
9 Respondent and transported her to a local police station. At the station while the booking
10 paperwork was being finished, Respondent smiled at the officer and said, "You know I'm going
11 to get off this. Judges like pretty girls, I'll get off this." Later, while she was being transported to
12 a nearby correctional facility Respondent said, "This won't stop me." When Respondent was
13 asked what she meant by this statement, she replied, "It won't stop me from drinking and
14 driving."

15 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

16 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

17 23. Respondent's application is subject to denial under sections 480, subdivision
18 (a)(3)(A), and 4301, subdivision (h) in that as described in paragraphs 13-14, 18, and 22, above,
19 Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to herself
20 and the public when she operated a vehicle with a high BAC and was under the influence of
21 alcohol in a public place.

22 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

23 **(Unprofessional Conduct - Conviction of Alcohol-Related Offenses)**

24 24. Respondent's application is subject to denial under sections 480, subdivision
25 (a)(3)(A), and 4301, subdivision (k) of the Code in that as described in paragraphs 13-14, 16-17,
26 and 20-21, above, Respondent was convicted of more than one misdemeanor or felony involving
27 the use or consumption of an alcoholic beverage.

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1 DISCIPLINARY CONSIDERATIONS

2 25. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
3 to California Code of Regulations, title 16, section 1769, Complainant alleges that on or about
4 March 25, 2010, in case number 09705DRJM, Riverside County Superior Court, Respondent was
5 cited for a violation of Vehicle Code section 12500, subdivision (a), driving without a valid
6 driver's license. On or about September 20, 2010, Respondent paid \$85.00 to the court and the
7 case was closed.

8 26. Complainant further alleges that on or about July 26, 2010, in a criminal proceeding
9 entitled *People v. Jemma Debra Amanda Mole*, Riverside County Superior Court, case number
10 SWM10004295, Respondent was convicted on her plea of guilty of violating Vehicle Code
11 Section 14601.1, subdivision (a), driving with knowledge that her license was suspended, a
12 misdemeanor; Vehicle Code section 26710, driving with a defective windshield or rear window,
13 an infraction; and Vehicle Code section 4000, subdivision (a)(1), driving without registration, an
14 infraction. The court granted summary probation for 36 months and ordered Respondent to pay a
15 fine.

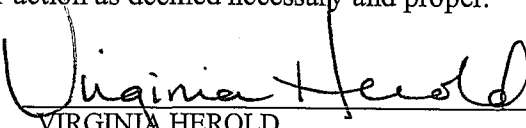
16 PRAYER

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

19 1. Denying the application of Jemma Debra Mole for a Pharmacy Technician
20 Registration; and

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

22 DATED: 8/22/11

23 
24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

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