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8	BEFORE THE			
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS			
10	STATE OF CALIFORNIA			
11	In the Matter of the Statement of Issues	Case No. 4419		
12	Against:			
13	MARIT RUTH FECHNER	STATEMENT OF ISSUES		
14	Pharmacist License Applicant			
15	Respondent.			
16	F			
17	Complainant alleges:			
18		<u>XTIES</u>		
19	1. Virginia Herold (Complainant) bring	gs 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 May 17, 2011, the Board of Pharmacy, Department of Consumer Affairs			
	2. On or about May 17, 2011, the Boar	d of Pharmacy, Department of Consumer Affairs		
22	2. On or about May 17, 2011, the Boar received an application for a Pharmacist License			
22 23	received an application for a Pharmacist License			
	received an application for a Pharmacist License	from Marit Ruth Fechner (Respondent). On or tified under penalty of perjury to the truthfulness		
23	received an application for a Pharmacist License about, February 3, 2011, Marit Ruth Fechner cer	from Marit Ruth Fechner (Respondent). On or tified under penalty of perjury to the truthfulness		
23 24	received an application for a Pharmacist License about, February 3, 2011, Marit Ruth Fechner cer of all statements, answers, and representations in	from Marit Ruth Fechner (Respondent). On or tified under penalty of perjury to the truthfulness		
23 24 25	received an application for a Pharmacist License about, February 3, 2011, Marit Ruth Fechner cer of all statements, answers, and representations in	from Marit Ruth Fechner (Respondent). On or tified under penalty of perjury to the truthfulness		
23 24 25 26	received an application for a Pharmacist License about, February 3, 2011, Marit Ruth Fechner cer of all statements, answers, and representations in	from Marit Ruth Fechner (Respondent). On or tified under penalty of perjury to the truthfulness		
23 24 25 26 27	received an application for a Pharmacist License about, February 3, 2011, Marit Ruth Fechner cer of all statements, answers, and representations in	from Marit Ruth Fechner (Respondent). On or tified under penalty of perjury to the truthfulness		

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 118 of the Code states, in pertinent part:	
6	"(a) The withdrawal of an application for a license after it has been filed with a board in	
7	the department shall not, unless the board has consented in writing to such withdrawal, deprive	
8	the board of its authority to institute or continue a proceeding against the applicant for the denial	
9	of the license upon any ground provided by law or to enter an order denying the license upon any	
10	such ground."	
11	STATUTORY AND REGULATORY PROVISIONS	
12	5. Section 480 of the Code states:	
13	"(a) A board may deny a license regulated by this code on the grounds that the applicant	
14	has one of the following:	
15	"(1) Been convicted of a crime. A conviction within the meaning of this section means a	
16	plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a	
17	board is permitted to take following the establishment of a conviction may be taken when the	
18	time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when	
19	an order granting probation is made suspending the imposition of sentence, irrespective of a	
20	subsequent order under the provisions of Section 1203.4 of the Penal Code.	
21	(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially	
22	benefit himself or herself or another, or substantially injure another.	
23	"(3) (A) Done any act that if done by a licentiate of the business or profession in question,	
24	would be grounds for suspension or revocation of license.	
25	"(B) The board may deny a license pursuant to this subdivision only if the crime or act is	
26	substantially related to the qualifications, functions, or duties of the business or profession for	
27	which application is made."	
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	STATEMENT OF ISSUES	

6. Section 4301 of the Code provides, in pertinent part, that "unprofessional conduct" is
 defined to include, but not be limited to, any of the following:

- "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
  drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
  oneself, to a person holding a license under this chapter, or to any other person or to the public, or
  to the extent that the use impairs the ability of the person to conduct with safety to the public the
  practice authorized by the license.
- 9 "(1) The conviction of a crime substantially related to the qualifications, functions, and
  10 duties of a licensee under this chapter."
  - 7. California Code of Regulations, title 16, section 1770, states:

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"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."

## FIRST CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct – Dangerous or Injurious Use of Alcohol) (Bus. & Prof. Code §§ 480, subd. (a)(3), 4301, subd. (h))

8. Respondent's application is subject to denial under Code section 480, subdivision
(a)(3), by reference to Code section 4301, subdivision (h), in that Respondent engaged in
unprofessional conduct by using alcohol in a dangerous and injurious manner. The circumstances
are as follows:

- 9. On or about February 5, 2012, at about 12:26 a.m., an officer with the Livermore
  Police Department observed Respondent's vehicle stopped along Kittyhawk Road in a no parking
  area, obstructing the highway. The officer parked his vehicle behind Respondent's vehicle and
  approached on foot. The officer observed Respondent kneeling next to the vehicle's right front
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1	tire with a can of tire repair fluid. Respondent's vehicle appeared as if it had just been in a	
2	collision, as there was significant damage to the right front fender, the airbag in the steering	
3	wheel was deployed, and there was a plastic lid and a napkin stuck to the interior of the front	
4	passenger side window. The vehicle was running. Respondent denied that the vehicle had just	
5	been in a collision, stating that it had been in a collision two weeks ago, and it had been "taken	
6	care of." The officer noticed that Respondent's breath smelled like alcohol and her balance was	
7	impaired. Respondent initially denied that she had been drinking, but later admitted that she had	
8	been drinking. Respondent also stated that she was in the United States Armed Forces and was	
9	stationed at Camp Pendleton in Southern California. She claimed that she was just visiting	
10	Livermore. The officer administered Standard Field Sobriety Tests (SFSTs) to Respondent, and	
11	Respondent showed significant impairment. Based on officer's the above observations, he	
12	arrested Respondent for violation of Vehicle Code section 23152, subdivision (a) (driving under	
13	the influence), and transported her to Santa Rita Jail, where she submitted to a blood test. When	
14	the officer completed the arrest report, Respondent listed a Livermore address as her home	
15	address, which conflicted with the information she had previously given the officer.	:
16	SECOND CAUSE FOR DENIAL OF APPLICATION	
17	(Conviction of Substantially Related Crime) (Bus. & Prof. Code §§ 480, subd. (a)(1), 4301, subd. (l); Cal. Code Regs., tit. 16, § 1770)	
18	10. Complainant realleges the allegations contained in paragraphs 8 and 9 above, and	
19	incorporates them by reference as if fully set forth.	
20	11. Respondent's application is subject to denial under Code section 480, subdivision	
21	(a)(1), by reference to Code section 4301, subdivision (l), and as defined by California Code of	
22	Regulations, title 16, section 1770, in that she was convicted of a crime substantially related to the	
23	qualifications, functions, and duties of a licensee. The circumstances are that on or about April	
24	19, 2012, in a criminal matter entitled The People of the State of California v. Marit Ruth	
25	Fechner, in the Alameda County Superior Court, Docket No. 140109, Respondent was convicted	
26	by plea of no contest of violating Vehicle Code section 23152, subdivision (a) (driving under the	
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1	influence of alcohol or drugs). Respondent was sentenced three years of probation and ordered to	
2.	complete a weekend work program and a 9 month DUI school.	
3	PRAYER	
4	WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this	
5	Statement of Issues, and that following the hearing, the Board of Pharmacy issue a decision:	
6	1. Denying the application of Marit Ruth Fechner for a Pharmacist License; and	
7	2. Taking such other and further action as deemed necessary and proper.	
8	$  _{123/12}$  ) $(1)$	
9	DATED: 123/13 VIRGINIA NEROLD Executive Officer	
10	Board of Pharmacy Department of Consumer Affairs	
11	State of California Complainant	
12	Comptuntant	
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