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

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

Case No. 4428

14 **MATTHEW JAMES GOMES**

**STATEMENT OF ISSUES**

15 **Pharmacist License Applicant**

16 Respondent.

17  
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 May 3, 2011, the Board of Pharmacy, Department of Consumer Affairs  
23 received an application for a Pharmacist License from Matthew James Gomes (Respondent). On  
24 or about April 7, 2011, Matthew James Gomes certified under penalty of perjury to the  
25 truthfulness of all statements, answers, and representations in the application. The Board denied  
26 the application on July 26, 2012.

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## JURISDICTION

3. This Statement of Issues is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 4300 of the Code provides, in pertinent part, that the Board may refuse a license to any applicant guilty of unprofessional conduct. The Board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure.

## STATUTORY PROVISIONS

5. Section 475 of the Code states:

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

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

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

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

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

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

6. Section 480 of the Code states:

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

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

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

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

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

8 (b) Notwithstanding any other provision of this code, no person shall be denied  
9 a license solely on the basis that he or she has been convicted of a felony if he or she  
10 has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with  
11 Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been  
12 convicted of a misdemeanor if he or she has met all applicable requirements of the  
13 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a  
14 person when considering the denial of a license under subdivision (a) of Section 482.

15 (c) A board may deny a license regulated by this code on the ground that the  
16 applicant knowingly made a false statement of fact required to be revealed in the  
17 application for the license.

18 7. Section 482 of the Code states:

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

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

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

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

25 8. Section 493 of the Code states:

26 Notwithstanding any other provision of law, in a proceeding conducted by a  
27 board within the department pursuant to law to deny an application for a license or to  
28 suspend or revoke a license or otherwise take disciplinary action against a person who  
holds a license, upon the ground that the applicant or the licensee has been convicted  
of a crime substantially related to the qualifications, functions, and duties 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.

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

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1 9. Section 4301 of the Code states:

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

6 . . . .

7 (h) The administering to oneself, of any controlled substance, or the use of any  
8 dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
9 dangerous or injurious to oneself, to a person holding a license under this chapter, or  
10 to any other person or to the public, or to the extent that the use impairs the ability of  
11 the person to conduct with safety to the public the practice authorized by the license.

12 . . . .

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

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

. . . .

## REGULATORY PROVISIONS

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

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

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

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

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

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

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

7 . . . .

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

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  
Professions Code, a crime or act shall be considered substantially related to the  
11 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  
12 functions authorized by his license or registration in a manner consistent with the  
public health, safety, or welfare.

13 **FIRST CAUSE FOR DENIAL OF APPLICATION**

14 **(February 28, 2012 Criminal Conviction for Driving Under the Influence of Alcohol**  
15 **& Causing Great Bodily Injury on June 12, 2011)**

16 12. Respondent's application for licensure is subject to denial under section 480,  
17 subdivisions (a)(1) and (a)(3)(A) of the Code in that Respondent was convicted of a crime that is  
18 substantially related to the qualifications, duties, and functions of a pharmacist, and would be a  
19 ground for discipline under section 4301, subdivision (l) of the Code for a licensed pharmacist.

20 The circumstances are as follows:

21 a. On or about October 21, 2011, in a criminal proceeding entitled *People of the*  
22 *State of California vs. Matthew James Gomes*, in San Diego County Superior Court, case number  
23 SCD234796, Respondent entered a plea of guilty to violating Vehicle Code section 23153,  
24 subdivision (a), driving under the influence of alcohol and causing bodily injury to another, a  
25 felony.

26 b. As a result of the plea agreement, on or about February 28, 2012, the court  
27 found Respondent guilty. The conviction was enhanced in that during the commission of the  
28 above offense, great bodily injury was inflicted within the meaning of Vehicle Code section

1 1192.7, subdivision (c)(8). The court dismissed a second count of violating Vehicle Code  
2 section 23153, and multiple enhancements, pursuant to the plea agreement. Respondent was  
3 granted five years formal probation, and sentenced to serve 180 days in jail, with credit for one  
4 day. Respondent was further ordered to pay fees and fines in the amount of \$1,784, pay  
5 restitution to the victims, submit to a Fourth Amendment Waiver, and comply with felony  
6 probation terms.

7 c. The facts that led to the conviction are that on or about the evening of June 12,  
8 2011, officers from the San Diego Police Department responded to a report of a vehicle vs.  
9 pedestrian collision. Upon arrival, the officers observed two females lying on the sidewalk.  
10 Respondent was sitting on the curb next to his heavily damaged Lexus. According to witnesses,  
11 Respondent had been observed consuming a large quantity of alcohol at a nearby nightclub.  
12 Friends attempted to take Respondent's car keys from him, but Respondent insisted on driving. A  
13 short time after Respondent left the nightclub, he drove away at a high rate of speed. Almost  
14 immediately, Respondent lost control of his vehicle, drove over a curb and hit a bus stop bench  
15 and sign. Respondent's vehicle continued down the sidewalk, striking a concrete garbage can, a  
16 speed limit sign, a parking meter, a tree, and a parked car. In the process of the collision, two  
17 female pedestrians were struck and injured; both were taken by ambulance to a nearby hospital.  
18 One victim received two five-inch lacerations to her head requiring eight stitches and 11 staples.  
19 The second victim complained of pain to her head, neck, and back. Respondent was arrested after  
20 he was treated at a hospital.

21 **SECOND CAUSE FOR DENIAL OF APPLICATION**

22 **(Felony Conviction Involving the Consumption of Alcoholic Beverages)**

23 13. Respondent's application for licensure is subject to denial under section 480,  
24 subdivision (a)(3)(A) of the Code in that Respondent was convicted of a felony offense involving  
25 the consumption of alcoholic beverages, as described in paragraph 12, above. Said conviction  
26 would be a ground for discipline under section 4301, subdivision (k) of the Code for a licensed  
27 pharmacist.

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1 THIRD CAUSE FOR DENIAL OF APPLICATION

2 (Dangerous Use of Alcohol)

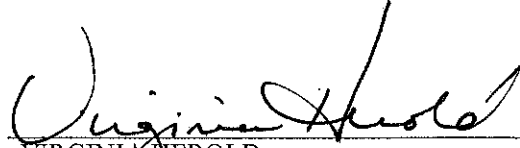
3 14. Respondent's application for licensure is subject to denial under section 480,  
4 subdivision (a)(3)(A) of the Code in that on or about June 6, 2011, as described in paragraph 12,  
5 above, Respondent used alcohol in a manner that was dangerous and injurious to himself and to  
6 others, which would be a ground for discipline under section 4301, subdivision (h) of the Code  
7 for a licensed pharmacist. In Respondent's plea agreement, dated October 21, 2011, he stated "I  
8 drove a vehicle in the County of San Diego with a blood alcohol level of .22% and I hit two  
9 people resulting in serious injury."

10 PRAYER

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

- 13 1. Denying the application of Matthew James Gomes for a Pharmacist License;  
14 2. Taking such other and further action as deemed necessary and proper.

15  
16 DATED: 11/19/12

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

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