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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  
12 Against:

Case No. 4833

13 **BREANNE MARIE HATCH**

**STATEMENT OF ISSUES**

14 **Pharmacy Technician Registration**  
15 **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 September 10, 2012, the Board of Pharmacy, Department of Consumer  
23 Affairs received an application for a Pharmacy Technician Registration from Breanne Marie  
24 Hatch (Respondent). Respondent is also known as Breanne Marie Martin. On or about  
25 September 4, 2012, Breanne Marie Hatch certified under penalty of perjury to the truthfulness of  
26 all statements, answers, and representations in the application. The Board denied the application  
27 on March 12, 2013.

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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, subdivision (c) of the Code provides, in pertinent part, that the Board may refuse a license to any applicant guilty of unprofessional conduct.

## 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.

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

///

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

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

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

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

16 7. Section 482 of the Code states:

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

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

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

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

23 8. Section 493 of the Code states:

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

9. Section 4301 of the Code states:

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

1                   . . . .  
2                   (h) The administering to oneself, of any controlled substance, or the use of any  
3 dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
4 dangerous or injurious to oneself, to a person holding a license under this chapter, or  
5 to any other person or to the public, or to the extent that the use impairs the ability of  
6 the person to conduct with safety to the public the practice authorized by the license.

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

27                   . . . .  
28                   **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.

(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, restitution or any other sanctions lawfully imposed against the applicant.

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

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

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

6 **FIRST CAUSE FOR DENIAL OF APPLICATION**

7 **(August 7, 2012 Criminal Conviction for DUI on April 26, 2012)**

8 12. Respondent's application for licensure is subject to denial under section 480,  
9 subdivisions (a)(1) and (a)(3)(A) of the Code in that she was convicted of a crime that is  
10 substantially related to the qualifications, duties, and functions of a registered pharmacy  
11 technician, and would be a ground for discipline under section 4301, subdivision (I) of the Code  
12 for a registered pharmacy technician. The circumstances are as follows:

13 a. On or about August 7, 2012, in a criminal proceeding entitled *People of the*  
14 *State of California vs. Breanne Marie Hatch, aka Breanne Marie Martin*, in Riverside County  
15 Superior Court, case number RIM1210112, Respondent was convicted on her plea of guilty to  
16 violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration  
17 (BAC) of .08 percent or more, a misdemeanor. Respondent admitted and the court found true the  
18 special allegation that Respondent's BAC was .15 percent or more, within the meaning of Vehicle  
19 Code section 23578. In Respondent's plea agreement, she admitted her BAC was .20 percent.

20 Pursuant to the plea agreement, the court dismissed an additional count of violating Vehicle Code  
21 section 23152, subdivision (a), driving under the influence of alcohol and/or drugs.

22 b. As a result of the conviction, on or about August 7, 2012, the court sentenced  
23 Respondent to serve 20 days in the custody of the sheriff, with credit for two days, to be served in  
24 the Work Release Program. Respondent was granted probation for 36 months, and ordered to  
25 complete an enhanced First Offender Drinking Driver Program (nine months) and a MADD  
26 Victim Impact Panel session, pay fees and fines, and comply with DUI probation terms.

27 c. The facts that led to the conviction are that on or about the evening of April 26,  
28 2012, an officer with the California Highway Patrol (CHP) observed Respondent driving on a

1 Corona roadway and crossing over the double yellow lines into the oncoming lane of traffic. The  
2 CHP officer followed Respondent as she failed to maintain her lane of travel. After conducting  
3 an enforcement stop, the CHP officer made contact with Respondent. He observed that  
4 Respondent's eyes were red and watery, and there was an odor of an alcoholic beverage emitting  
5 from within the vehicle. The officer had Respondent exit her vehicle to conduct his pre-field  
6 sobriety test questions. Respondent had a strong odor of an alcoholic beverage on her breath, and  
7 her speech was slurred and slow. Respondent was unable to complete the field sobriety tests as  
8 explained and demonstrated by the officer, as she was described as uncooperative. Respondent  
9 provided a breath sample which was analyzed with a BAC of .173 percent. Respondent was  
10 arrested for driving under the influence of alcohol; during booking, she provided a blood sample.

11 **SECOND CAUSE FOR DENIAL OF APPLICATION**

12 **(Dangerous Use of Alcohol)**

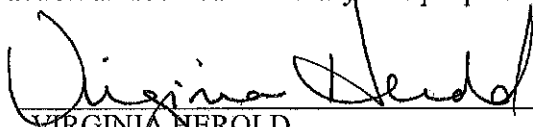
13 13. Respondent's application for licensure is subject to denial under section 480,  
14 subdivision (a)(3)(A) of the Code in that on or about April 26, 2012, as described in paragraph  
15 12, above, she used alcohol in a manner that was dangerous or injurious to herself and to others,  
16 which would be a ground for discipline under section 4301, subdivision (h) of the Code for a  
17 registered pharmacy technician.

18 **PRAYER**

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

- 21 1. Denying the application of Breanne Marie Hatch for a Pharmacy Technician  
22 Registration;  
23 2. Taking such other and further action as deemed necessary and proper.

24 DATED: 9/19/13

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

SD2013705599