

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SUSANA A. GONZALES
Deputy Attorney General
4 State Bar No. 253027
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2221
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

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

11 In the Matter of the Statement of Issues
Against:

Case No. 4878

12 **PENELOPE PAIGE REESE, a.k.a.**
13 **PENELOPE REESE**

STATEMENT OF ISSUES

14 Respondent.

15
16 Complainant alleges:

17 PARTIES

18 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

20 2. On or about June 26, 2012, the Board of Pharmacy, Department of Consumer Affairs
21 received an application for a/an Pharmacy Technician Registration from Penelope Paige Reese,
22 also known as Penelope Reese (Respondent). On or about June 24, 2012, Penelope Paige Reese,
23 also known as Penelope Reese certified under penalty of perjury to the truthfulness of all
24 statements, answers, and representations in the application. The Board denied the application on
25 April 26, 2013.

26 ///

27 ///

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:

6 “(a) The withdrawal of an application for a license after it has been filed with a board in the
7 department shall not, unless the board has consented in writing to such withdrawal, deprive the
8 board of its authority to institute or continue a proceeding against the applicant for the denial of
9 the license upon any ground provided by law or to enter an order denying the license upon any
10 such ground.”

11 5. Section 4300, subdivision (c), of the Code states:

12 “(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The
13 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
14 guilty of unprofessional conduct and who has met all other requirements for licensure. The board
15 may issue the license subject to any terms or conditions not contrary to public policy”

16 STATUTORY AND REGULATORY PROVISIONS

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

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

24 . . .

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

1 “(l) The conviction of a crime substantially related to the qualifications, functions, and
2 duties of a licensee under this chapter.”

3 ...

4 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
5 violation of or conspiring to violate any provision or term of this chapter or of the applicable
6 federal and state laws and regulations governing pharmacy, including regulations established by
7 the board or by any other state or federal regulatory agency.”

8 7. Section 480 of the Code states, in pertinent part:

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

11 “(1) Been convicted of a crime. . . . Any action which a board is permitted to take following
12 the establishment of a conviction may be taken . . . irrespective of a subsequent order under the
13 provisions of Section 1203.4 of the Penal Code.

14 “(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially
15 benefit himself or another, or substantially injure another; or

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

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

21 8. Section 492 of the Code states:

22 “Notwithstanding any other provision of law, successful completion of any diversion
23 program under the Penal Code, or successful completion of an alcohol and drug problem
24 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
25 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
26 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
27 division, from taking disciplinary action against a licensee or from denying a license for
28

1 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
2 record pertaining to an arrest.

3 "This section shall not be construed to apply to any drug diversion program operated by any
4 agency established under Division 2 (commencing with Section 500) of this code, or any initiative
5 act referred to in that division."

6 9. Section 493 of the Code states:

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

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

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

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

25 ///

26 ///

27 ///

28 ///

1 FIRST CAUSE FOR DENIAL OF APPLICATION

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

4 11. Respondent's application is subject to denial under Code sections 480, subdivision
5 (a)(3), and 4301, subdivision (h), in that on or about July 12, 2012, Respondent engaged in
6 unprofessional conduct by using alcohol in a dangerous and injurious manner. The circumstances
7 are as follows:

8 12. On or about June 13, 2012, at approximately 1:00 a.m., Respondent entered the San
9 Mateo Police Department ("SMPD") and stated that she believed she had just run over her
10 boyfriend with her car. An SMPD officer, Officer 1, met Respondent in the SMPD lobby.
11 Officer 1 immediately recognized Respondent from several prior incidents involving alcohol and
12 domestic disputes at her residence. As Officer 1 spoke to Respondent, he noticed that her speech
13 was heavily slurred, her breath smelled like alcohol, and she staggered when she walked. After
14 Respondent admitted that she drove her car to the police station, she began swearing and calling
15 Officer 1 profanities.

16 13. Officer 1 spoke to Respondent's boyfriend, E.L., on the phone, and E.L. confirmed
17 that Respondent did not run him over with her car and he was unharmed. When Officer 1
18 informed Respondent that E.L. was at home and uninjured, Respondent changed her story about
19 what had happened. She became very uncooperative by swearing and insulting the officers
20 present. Respondent refused to perform any field sobriety tests or to give a breath or blood
21 sample. At approximately 2:25 a.m., a Phlebotomist was able to collect a blood sample from
22 Respondent without incident. At approximately 2:38 a.m., Respondent took the breath test that
23 indicated that she had a blood alcohol content of .212 percent. Officer 1 arrested Respondent for
24 violating Vehicle Code section 23152, subdivision (a) (driving under the influence). Officer 1
25 later obtained surveillance footage of Respondent driving her vehicle into the SMPD parking lot.

26 14. After Respondent's arrest, Officer 1 went to Respondent's residence to interview E.L.
27 E.L. told Officer 1 that Respondent had been drinking all night and was trying to provoke a fight
28 with him. She eventually got into their car and pulled up in front of their apartment. E.L.
repeatedly asked her to turn off the car and let him park it because she was drunk. E.L. then got

1 into the passenger side of the car and attempted to remove the keys from the ignition, but
2 Respondent sped off with E.L. still in the car. When Respondent stopped at an intersection about
3 one block away from their apartment, E.L. exited the car out of fear for his safety because
4 Respondent was so intoxicated.

5 SECOND CAUSE FOR DENIAL OF APPLICATION

6 (Conviction of Substantially Related Crime)
(Bus. & Prof. Code §§ 480, subd. (a)(1) & 4301, subd. (l))

7 15. Complainant realleges the allegations contained in paragraphs 11 through 14 above,
8 and incorporates them by reference as if fully set forth.

9 16. Respondent's application is subject to denial under Code sections 480, subdivision
10 (a)(1), and 4301, subdivision (l), as defined by California Code of Regulations, title 16, section
11 1770, in that she was convicted of a crime substantially related to the qualifications, functions,
12 and duties of a licensee. Specifically, on or about September 21, 2012, in a criminal matter
13 entitled *The People of the State of California v. Penelope Paige Reese*, in the Superior Court of
14 San Mateo County, Case No. NM411948A, Respondent was convicted by plea of nolo contendere
15 of violating Vehicle Code section 23152, subdivision (b) (driving under the influence with a
16 blood alcohol content of .08% or higher), a misdemeanor, with a special enhancement of Vehicle
17 Code section 23578 (driving with a blood alcohol content of .15% or higher). Respondent was
18 placed on probation for three years and ordered not to drive with any alcohol in her system.

19 THIRD CAUSE FOR DENIAL OF APPLICATION

20 (Unprofessional Conduct – Dangerous or Injurious Use of Alcohol)
21 (Bus. & Prof. Code §§ 480, subd. (a)(3), 4300 & 4301 subd. (h))

22 17. Respondent's application is subject to denial under Code sections 480, subdivision
23 (a)(3), and 4301, subdivision (h), in that on or about August 16, 2012, Respondent engaged in
24 unprofessional conduct by using alcohol in a dangerous and injurious manner. The circumstances
25 are that on or about August 16, 2012, Respondent was arrested by a California Highway Patrol
26 ("CHP") officer for violating Vehicle Code sections 23153, subdivision (a) (driving under the
27 influence and causing bodily injury to another person). Specifically, on or about August 16, 2012,
28 at approximately 1:30 a.m., a CHP officer received a report of a traffic collision. The officer

1 responded to the scene and determined that the collision was a major injury hit and run. The
2 collision involved several parties and several vehicles. The officer interviewed Party 2 ("P-2") at
3 the scene of the collision. P-2 was on a gurney in an ambulance during the interview. P-2
4 explained to the officer that he was driving northbound on Interstate 880 ("I-880") when he felt a
5 big impact from the rear of his vehicle. The impact caused him to lose control of his vehicle. He
6 could not recall what happened after the initial impact.

7 18. The officer also interviewed Party 3 ("P-3") at the scene of the collision. P-3 stated
8 that he was driving his vehicle on I-880 when he looked in his rear-view mirror and observed a
9 large vehicle approaching at a high speed. He moved over a lane and moments later he observed
10 P-2's vehicle spin out of control and collide with the left side of his vehicle. P-3 lost control of
11 his vehicle upon impact and spun clockwise, ending up on the embankment. He saw the SUV
12 quickly leave the scene. P-3 exited his vehicle and called 9-1-1.

13 19. The officer interviewed Witness 3 ("W-3") by telephone. W-3 stated that he was
14 driving near I-880 and he observed a red SUV speeding and driving erratically. The SUV almost
15 collided with W-3's vehicle and a semi-truck. W-3 later saw two cars on the right shoulder that
16 appeared to have just been in a traffic collision.

17 20. The officer interviewed Witness 1 ("W-1"), an Alameda County Fire Captain, by
18 telephone at approximately 2:48 a.m. W-1 explained that he was dispatched to the parking lot of
19 an apartment complex in San Leandro after a report of a possible vehicle on fire. When W-1
20 arrived, he observed Respondent sitting in the driver's seat of her vehicle. W-1 observed major
21 damage to the front left of the vehicle that appeared to be the result of a traffic collision. Alameda
22 County Sheriff's Deputies detained Respondent at the apartment complex until the CHP officer
23 arrived to interview her.

24 21. When the CHP officer arrived to the apartment complex to interview Respondent, he
25 noticed that her eyes were red and watery, her speech was slurred, and she smelled like alcohol.
26 Although Respondent was sitting in the driver's seat of her vehicle, she denied driving it and
27 claimed that the vehicle appeared damaged when her friend dropped her off. She was unable to
28 explain who had been driving her vehicle. Respondent admitted that she drank alcohol that

1 evening and stated that she drank "enough to be happy." The officer directed Respondent to a
2 series of FST's, but Respondent refused to answer most of the officer's questions and only
3 performed one FST. As the officer was giving Respondent the Preliminary Alcohol Screening
4 ("PAS") admonishment, Respondent swung her hand at the PAS device, trying to knock it out of
5 the officer's hand, then she ran away. The officer chased after Respondent and after she lost her
6 balance and fell, the officer restrained her while his partner handcuffed her.

7 22. Based upon the officer's observations, the party statements, the witness statements,
8 and the damage to the vehicles involved, the officer concluded that Respondent had been driving
9 under the influence and he placed her under arrest for violating Vehicle Code section 23153,
10 subdivision (a) (driving under the influence and causing bodily injury to another person). The
11 officer also recommended that Respondent be charged with violating Vehicle Code sections
12 20001, subdivision (a) (hit and run), 14601, subdivision (a), (driving when driving privilege is
13 suspended or revoked for reckless driving), and Penal Code section 148, subdivision (a)
14 (resisting, delaying, or obstructing an officer).

15 FOURTH CAUSE FOR DENIAL OF APPLICATION

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

18 23. Respondent's application is subject to denial under Code sections 480, subdivision
19 (a)(3), and 4301, subdivision (h), in that on or about August 24, 2012, Respondent engaged in
20 unprofessional conduct by using alcohol in a dangerous manner. The circumstances are that on or
21 about August 24, 2012, Officer 1 of the San Mateo Police Department ("SMPD"), the same
22 officer involved in Respondent's June 12, 2012 arrest, was dispatched to Respondent's apartment
23 in San Mateo after an anonymous neighbor reported a loud physical fight between two females.
24 As Officer 1 walked to the front door of Respondent's apartment, the door opened suddenly and
25 Respondent was pushed through the door by an elderly woman who was later identified as E.L.'s
26 mother, L.L. Officer 1 immediately noticed that Respondent smelled like alcohol and her speech
27 was extremely slurred. She immediately began screaming profanities at Officer 1. Officer 1 had
28 Respondent sit outside of with another officer while he went inside the apartment to investigate.

///

1 24. Officer one spoke to E.L.'s mother, L.L., and father, H.L., about what had happened
2 that evening. They explained that Respondent was intoxicated and acting belligerent. They heard
3 Respondent yelling at E.L. and E.L.'s daughter, A.L., earlier that evening and they went upstairs
4 to see what was happening. They saw Respondent hit E.L. repeatedly in the face with her fists
5 and open hands. After the altercation they all heard a siren, which they assumed meant that the
6 police were on their way, so they went downstairs. Officer 1 arrived a few minutes later. After
7 interviewing L.L. and H.L., Officer 1 stepped outside and attempted to ask Respondent about the
8 incident, but she continued to scream profanities at him so he stepped back inside the apartment
9 to interview A.L. and E.L.

10 25. Officer 1 interviewed A.L. and learned that she is E.L.'s 17 year-old daughter who
11 lives in the apartment with Respondent, E.L., and Respondent's 3 year-old daughter. A.L. told
12 Officer 1 that she does not get along well with Respondent due to Respondent's drinking
13 problem. A.L. stated that earlier in the evening, Respondent accompanied E.L. to Half Moon Bay
14 to pick up A.L., however neither E.L. nor A.L. wanted Respondent to go. On the way home from
15 Half Moon Bay, Respondent repeatedly told A.L. that she loved her and that she wanted to stop
16 drinking, however A.L. ignored her. Once they arrived home, Respondent followed A.L. around
17 the apartment and A.L. continued to ignore her. Respondent became upset and began yelling at
18 A.L. E.L. eventually went upstairs to see what was happening and Respondent began hitting him
19 in the face repeatedly. The attack lasted two to three minutes. A.L. attempted to intervene at one
20 point, and Respondent stopped hitting E.L. and struck A.L. in the face. A.L. had a bruise on her
21 cheek and scratches on her arm from her attempt to get Respondent away from her father.

22 26. Officer 1 also interviewed E.L. about the assault. E.L. corroborated that Respondent
23 was involved in an accident about one week prior on August 17, 2012, as described in paragraphs
24 17 through 22, above, and that she was currently out of bail for that incident. On the evening of
25 August 24, 2012, E.L. stated that Respondent began drinking at about 5:00 p.m., and then began
26 drinking heavily at about 7:00 p.m., after an argument with her ex-boyfriend about visitation of
27 their son and her drinking problem. At about 10:30 p.m., E.L. heard Respondent yelling at his
28 daughter so he went upstairs to see what was going on. He saw Respondent yelling in A.L.'s face,

1 so he tried to pull her away from A.L. Respondent began hitting him in the face repeatedly,
2 possibly 20 to 30 times. E.L. had a black eye and a cut on his nose as a result of the assault. E.L.
3 saw a bruise on his daughter's face after the attack.

4 27. While Officer 1 transported Respondent to SMPD, she screamed profanities at him,
5 unlatched her seatbelt, and thrashed around in the back of the patrol car. Officer 1 tried to ask
6 Respondent about the incidents of the evening, but Respondent continued to scream "I want my
7 lawyer, bitch." Respondent was booked for violating Penal Code sections 273.5, subdivision (a)
8 (domestic violence with injury), 273a, subdivision (a) (willful injury to a child), and 12022.1
9 (committing a felony while out on bail for a felony). The last charge was based upon
10 confirmation from Alameda County Jail that Respondent was out of \$100,000.00 bail for
11 violating Vehicle Code section 23152, subdivision (a) (DUI causing injury).

12 FIFTH CAUSE FOR DENIAL OF APPLICATION

13 (Conviction of Substantially Related Crime)
14 (Bus. & Prof. Code §§ 480, subd. (a)(1) & 4301, subd. (l))

15 28. Complainant realleges the allegations contained in paragraphs 23 through 27 above,
16 and incorporates them by reference as if fully set forth.

17 29. Respondent's application is subject to denial under Code sections 480, subdivision
18 (a)(1), and 4301, subdivision (l), as defined by California Code of Regulations, title 16, section
19 1770, in that she was convicted of a crime substantially related to the qualifications, functions,
20 and duties of a licensee. The circumstances are that on or about September 6, 2012, in a criminal
21 matter entitled *The People of the State of California v. Penelope Paige Reese*, in the Superior
22 Court of San Mateo County, Case No. NM413057A, Respondent was convicted by plea of nolo
23 contendere of violating Penal Code section 243, subdivision (e)(1) (domestic battery), a
24 misdemeanor. Respondent was placed on supervised probation for 18 months followed by court
25 probation for 18 months, and sentenced to serve 90 days in County Jail. Respondent was allowed
26 to serve the jail time in a Court-approved residential treatment program rather than County Jail.
27 Respondent was also ordered to pay various fees and fines, not enter any public place where the
28 primary item sold or dispensed is intoxicating liquor, abstain from the use or possession of

1 alcoholic beverages, and enroll in domestic violence counseling. Respondent was also served
2 with a protective order requiring her to stay away from E.L.

3 SIXTH CAUSE FOR DENIAL

4 (Conviction of More than One Misdemeanor Involving the Use, Consumption, or
5 Self-administration of any Dangerous Drug or Alcoholic Beverage)
6 (Bus. & Prof. Code § 480, subd. (a)(3), and 4301, subd. (k))

7 30. Complainant realleges the allegations contained in paragraphs 11 through 29, and
8 incorporates them as if fully set forth.

9 31. Respondent's application is subject to denial under Code section 480, subdivision
10 (a)(3), and 4301, subdivision (k), in that she was convicted of more than one misdemeanor
11 involving the use, consumption, or self-administration of alcoholic beverages. The circumstances
12 are set forth in paragraphs 11 through 29, above.

13 SEVENTH CAUSE FOR DENIAL

14 (Unprofessional Conduct)
15 (Bus. & Prof. Code §§ 480, subd. (a)(3), and 4301)

16 32. Complainant realleges the allegations contained in paragraphs 11 through 29 above,
17 and incorporates them by reference as if fully set forth.

18 33. Respondent's application is subject to denial under Code section 480, subdivision
19 (a)(3), and 4301, in that Respondent engaged in general unprofessional conduct. The
20 circumstances of Respondent's conduct are set forth above in paragraphs 11 through 29.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

///

///

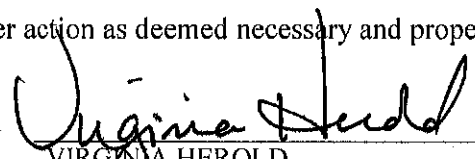
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Statement of Issues, and that following the hearing, the Board of Pharmacy issue a decision:

1. Denying the application of Penelope Paige Reese, also known as Penelope Reese for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 11/14/13


VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

SF2013901751
90349247.doc