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

12 In the Matter of the Statement of Issues Against:

Case No. 5089

13 **GEORGETTE DELORES OATMEYER**

14 **Pharmacy Technician License Applicant**

STATEMENT OF ISSUES

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 ("Board"), Department of Consumer
20 Affairs.

21 2. On or about January 25, 2013, the Board received an application for a pharmacy
22 technician license from Georgette Delores Oatmeyer ("Respondent"). On or about December 30,
23 2012, Respondent certified under penalty of perjury to the truthfulness of all statements, answers,
24 and representations in the application. The Board denied the application on December 3, 2013.

25 **JURISDICTION**

26 3. This Statement of Issues is brought before the Board under the authority of the
27 following laws. All section references are to the Business and Professions Code unless otherwise
28 indicated.

STATUTORY PROVISIONS

4. Code section 480 states, in pertinent part:

(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.

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

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

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

5. Code section 492 states, in pertinent part:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest . . .

6. Code section 4202 states, in pertinent part:

(c) The board shall conduct a criminal background check of the applicant to determine if an applicant has committed acts that would constitute grounds for denial of licensure, pursuant to this chapter or Chapter 2 (commencing with Section 480) of Division 1.5.

(d) The board may suspend or revoke a license issued pursuant to this section on any ground specified in Section 4301 . . .

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1 7. Code section 4301 states, in pertinent part:

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 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
7 deceit, or corruption, whether the act is committed in the course of relations as a
8 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

9 (g) Knowingly making or signing any certificate or other document that falsely
10 represents the existence or nonexistence of a state of facts.

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

16 (i) The violation of any of the statutes of this state, or any other state, or of the
17 United States regulating controlled substances and dangerous drugs.

18 (j) The conviction of a crime substantially related to the qualifications,
19 functions, and duties of a licensee under this chapter. The record of conviction of a
20 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
21 States Code regulating controlled substances or of a violation of the statutes of this
22 state regulating controlled substances or dangerous drugs shall be conclusive
23 evidence of unprofessional conduct. In all other cases, the record of conviction shall
24 be conclusive evidence only of the fact that the conviction occurred. The board may
25 inquire into the circumstances surrounding the commission of the crime, in order to
26 fix the degree of discipline or, in the case of a conviction not involving controlled
27 substances or dangerous drugs, to determine if the conviction is of an offense
28 substantially related to the qualifications, functions, and duties of a licensee under this
chapter. A plea or verdict of guilty or a conviction following a plea of nolo
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.

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

26 8. Code section 4022 states, in pertinent part:

27 "Dangerous drug" . . . means any drug or device unsafe for self-use in humans
28 or animals, and includes the following:

1 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
without prescription," "Rx only," or words of similar import.

2 (c) Any other drug or device that by federal or state law can be lawfully
3 dispensed only on prescription or furnished pursuant to Section 4006.

4 9. Code section 4060 states, in pertinent part:

5 No person shall possess any controlled substance, except that furnished to a
6 person upon the prescription of a physician, dentist, podiatrist, optometrist,
7 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
8 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
9 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 . . .

10 DRUGS

11 10. **Klonopin**, a brand of clonazepam, is a Schedule IV controlled substance as
12 designated by Health and Safety Code section 11057, subdivision (d)(7), and a dangerous drug
13 within the meaning of Code section 4022.

14 11. **Methadone Hydrochloride** is a Schedule II controlled substance as designated by
15 Health and Safety Code section 11055, subdivision (c)(14), and a dangerous drug within the
16 meaning of Code section 4022.

17 12. **Xanax**, a brand of alprazolam, is a Schedule IV controlled substance as designated by
18 Health and Safety Code section 11057, subdivision (d)(1), and a dangerous drug within the
19 meaning of Code section 4022.

20 FIRST CAUSE FOR DENIAL

21 (Criminal Conviction)

22 13. Respondent's application is subject to denial pursuant to Code section 480,
23 subdivisions (a)(1) and (a)(3)(A), in that on or about October 16, 2012, in the case titled *People*
24 *vs. Georgette Delores Oatmeyer* (Super. Ct. Sacramento County, Case No. 12T00230), Respon-
25 dent pled nolo contendere to violating Vehicle Code ("VC") section 23103.5 [plea of nolo
26 contendere to violating VC 23103 instead of violating VC section 23152; her BAC indicates
27 Methadone], a misdemeanor. Said crime is substantially related to the qualifications, functions,
28 and duties of a pharmacy technician. Respondent's conviction would constitute cause for

1 discipline against her pursuant to Code section 4301, subdivision (I), were she a licentiate of the
2 Board.

3 a. The underlying circumstances of the above crime are: On or about October 24,
4 2011, a Rancho Cordova Police Department ("PD") responded to a radio broadcast that a white
5 Lexus had been involved in a hit and run collision on Sunrise Boulevard near Highway 50,
6 Rancho Cordova, CA. The officer subsequently located the vehicle (with front end damage) at
7 White Rock Road and Sunrise Boulevard, Rancho Cordova. Respondent failed to yield to the
8 officer's overhead red and blue lights on his patrol vehicle and siren. Eventually, Respondent
9 yielded to the side of the roadway. Respondent admitted to the officer that she had been involved
10 in a car accident on Sunrise Boulevard. Based upon the officer's observations that Respondent
11 had lethargic speech and movement, a different PD officer responded to the scene to conduct a
12 Drug Recognition Evaluation ("DRE") of Respondent. Respondent admitted to the DRE officer
13 that she had taken Klonopin prior to operating her vehicle. The DRE officer placed Respondent
14 under arrest for driving under the influence of alcohol and/or drugs in violation of VC section
15 23152, subdivision (a), and unsafe speed in violation of VC section 22350, and transported her to
16 the PD where that officer conducted a DRE on Respondent. The DRE officer's observations of
17 Respondent included the following: droopy eyes; unable to stay awake; slow and slurred speech;
18 swaying, lethargic, and unsteady on her feet; and, unable to follow directions. Based upon
19 Respondent's admissions to taking Klonopin and her DRE, the officer determined that
20 Respondent was under the influence of a narcotic analgesic and was unable to operator a motor
21 vehicle safely.

22 **SECOND CAUSE FOR DENIAL**

23 **(Self-Administration or Use of Controlled Substances to an Extent**
24 **or in a Manner Dangerous or Injurious to Oneself and Others)**

25 14. Respondent's application is subject to denial pursuant to Code section 480,
26 subdivision (a)(3)(A), in that on or about October 24, 2011, Respondent self-administered or used
27 Klonopin and methadone, both controlled substances and dangerous drugs, to an extent or in a
28 manner dangerous or injurious to herself, others, and the public, as set forth in paragraphs 13 and

1 14 above, incorporated herein by reference. Respondent's acts would constitute cause for
2 discipline against her pursuant to Code section 4301, subdivision (h), were she a licentiate of the
3 Board.

4 **THIRD CAUSE FOR DENIAL**

5 **(Violations of State Laws Regulating Controlled Substances)**

6 15. Respondent's application is subject to denial pursuant to Code section 480,
7 subdivision (a)(3)(A), in that Respondent possessed the controlled substance Xanax without a
8 valid prescription from a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic
9 doctor, in violation of Code section 4060. Respondent's act would constitute cause for discipline
10 against her pursuant to Code section 4301, subdivisions (j) and (o), were she a licentiate of the
11 Board.

12 16. On or about August 27, 2011, a California Highway Patrol ("CHP") officer responded
13 to a medical emergency call where he observed a driver slumped over the steering wheel of a
14 white Lexus, parked in a Raley's parking lot. The Respondent was asleep upon the officer's
15 arrival; he woke her to ensure that she did not have a medical emergency. As Respondent exited
16 the vehicle, the officer observed that she had a small piece of plastic with white pills, that
17 Respondent attempted to place the pills in her sweat shirt pocket. Respondent admitted they were
18 Xanax pills. The officer observed two containers containing various pills located in plain view in
19 the center console of Respondent's vehicle. The officer found over 30 alprazolam (Xanax) pills
20 in the containers and two Xanax pills in Respondent's hand. There were no prescription bottles
21 or prescriptions for the pills. Respondent was arrested for violating Business and Professions
22 Code section 4060 and Health and Safety Code section 11375, subdivision (b)(2). On or about
23 September 30, 2011, Respondent was charged in Sacramento County Superior Court, Case No.
24 11M06732, with violating Code section 4060. Respondent pled to the charges; however,
25 judgment and sentencing were deferred and Respondent was admitted into the Court's deferred
26 entry of judgment ("DEJ") program. On or about March 9, 2012, the DEJ was lifted and the
27 criminal proceeding was reinstated due to Case No. 12T000230 against Respondent, as alleged in
28

1 paragraph 13, and its subpart, above. On or about May 22, 2012, Case No. 11M06732 was
2 dismissed due to Respondent's successful completion of the DEJ program.

3 **FOURTH CAUSE FOR DENIAL**

4 **(False Statement in Respondent's Application for Licensure)**

5 17. Question 7 on Respondent's application for licensure stated, in part, as follows:

6 Have you ever been convicted of any crime in any state, the USA and its
7 territories, military court or foreign country?

8 Check the box next to "Yes" if you have ever been convicted or plead
9 guilty to any crime. "Conviction" includes a plea of no contest and any conviction
10 that has been set aside or deferred pursuant to Sections 1000 or 1203.4 of the Penal
11 Code, including infractions, misdemeanor, and felonies. You do not need to report a
12 conviction for an infraction with a fine of less than \$300 unless the infraction
13 involved alcohol or controlled substances. You must, however, disclose any
14 convictions in which you entered a plea on no contest and any convictions that were
15 subsequently set aside pursuant or deferred pursuant to sections 1000 or 1203.4 of the
16 Penal Code . . .

17 18. Respondent's application is subject to denial pursuant to Code section 480,
18 subdivision (c), in that on or about December 30, 2012, Respondent knowingly made a false
19 statement of fact required to be revealed in her application, as follows: Respondent certified
20 under penalty of perjury that she had never been convicted of or plead guilty to any crime. In
21 fact, Respondent had been convicted of violating Vehicle Code section 23103.5 on October 16,
22 2012, in Sacramento County Superior Court Case No. 12T00230 as set forth in paragraph 13,
23 above, incorporated herein by reference. Further, Respondent failed to disclose her plea and
24 conviction that were set aside pursuant to Penal Code section 1000 for possession of Xanax, a
25 controlled substance and dangerous drug, in Sacramento County Superior Court Case No.
26 11M06732, as alleged in paragraph 16, above, incorporated herein by reference. Respondent's
27 act of making or giving a false statement or information in connection with her application would
28 constitute cause for discipline against her pursuant to Code section 4301, subdivisions (f) and (g),
were she a licentiate of the Board.

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1 **FIFTH CAUSE FOR DENIAL**

2 **(Dishonesty, Fraud or Deceit)**

3 19. Respondent's application is subject to denial pursuant to Code section 480,
4 subdivision (a)(2), in that on or about December 30, 2012, Respondent committed an act
5 involving dishonesty, fraud or deceit with the intent to substantially benefit herself or another, or
6 substantially injure another, as set forth in paragraph 18, above, incorporated herein by reference.

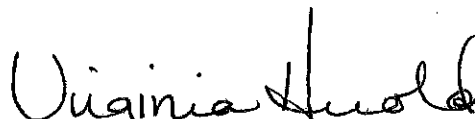
7 **PRAYER**

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

- 10 1. Denying the application of Georgette Delores Oatmeyer for a pharmacy technician
11 license;
- 12 2. Taking such other and further action as deemed necessary and proper.

13
14 DATED: _____

6/7/14



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

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