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|----------|---|---|
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| 7 | BEFOR | |
| 8 | BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS | |
| 9 | STATE OF CA | |
| 10 | In the Matter of the Statement of Issues Against: | Case No. 5105 |
| 11 12 | GABRIEL WONG | |
| 12 | Applicant for Intern Pharmacist License | STATEMENT OF ISSUES |
| 13 | Respondent. | |
| 15 | Complainant alleges: | 1 |
| 16 | PART | TES |
| 17 | | this Statement of Issues solely in her official |
| 18 | capacity as the Executive Officer of the Board of I | |
| 19 | | d of Pharmacy, Department of Consumer |
| 20 | Affairs received an Application for Registration as | an Intern Pharmacist from Gabriel Wong |
| 21 | (Respondent). On or about September 19, 2013, C | Babriel Wong certified under penalty of perjury |
| 22 | as to the truthfulness of all statements, answers, ar | nd representations in the Application. The |
| 23 | Board denied the application on January 7, 2014. | |
| 24 | JURISDI | CTION |
| 25 | 3. This Statement of Issues is brought be | fore the Board of Pharmacy (Board), |
| 26 | Department of Consumer Affairs, under the author | rity of the following laws. All section |
| 27 | references are to the Business and Professions Co | le (Code) unless otherwise indicated. |
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| ļ | | STATEMENT OF ISSUES (Case No. 5105) |

STATUTORY AND REGULATORY PROVISIONS

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Section 4300, subdivision (c), of the Code states in pertinent part:

"(c) 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. The board may issue the license subject to any terms or conditions not contrary to public policy"

5. 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.

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

(1) The conviction of a crime substantially related to the qualifications, functions, and dutiesof a licensee under this chapter.

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

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

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

25 "(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially
26 benefit himself or another, or substantially injure another; or

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

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| 1 | "The board may deny a license pursuant to this subdivision only if the crime or act is |
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| 2 | substantially related to the qualifications, functions or duties of the [license]." |
| 3 | 7. California Code of Regulations, title 16, section 1770, states: |
| 4 | "For the purpose of denial, suspension, or revocation of a personal or facility license |
| 5 | pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a |
| 6 | crime or act shall be considered substantially related to the qualifications, functions or duties of a |
| 7 | licensee or registrant if to a substantial degree it evidences present or potential unfitness of a |
| 8 | licensee or registrant to perform the functions authorized by his license or registration in a manner |
| 9 | consistent with the public health, safety, or welfare." |
| 10 | FIRST CAUSE FOR DENIAL OF APPLICATION |
| 11 | (Conviction of Substantially Related Crime(s)) |
| 12 | 8. Respondent's application is subject to denial under the following section(s) of the |
| 13 | Code: 480(a)(1); 480(a)(3) by reference to 4301(l); and/or 4300(c) by reference to 4301(l) and |
| 14 | California Code of Regulations, title 16, section 1770, for conviction of a substantially related |
| 15 | crime, in that on or about June 18, 2009, in a criminal case titled People v. Gabriel Wong, Case |
| 16 | No. 418516-7 in Alameda County Superior Court, Respondent was convicted of violating Vehicle |
| 17 | Code section 23152, subdivision (a) (Driving While Under the Influence of Alcohol/Drug), a |
| 18 | misdemeanor. The conviction was entered as follows: |
| 19 | a. On or about April 3, 2009, Respondent was observed by California Highway Patrol |
| 20 | officer(s) driving a vehicle on I-580, too close to another vehicle, and maintaining a steady speed |
| 21 | of 90 mph. Respondent was pulled over, at which time the officer(s) detected the odor of alcohol |
| 22 | coming from the vehicle. Respondent was unable to successfully perform Field Sobriety Tests |
| 23 | (FSTs), and a breath test measured his blood alcohol level at 0.15% or 0.16%. |
| 24 | b. On or about April 22, 2009, Respondent was charged by Complaint in Case No. |
| 25 | 418516-7 in Alameda County Superior Court with violating (1) Vehicle Code section 23152, |
| 26 | subdivision (a) (Driving While Under the Influence of Alcohol/Drug), a misdemeanor, and (2) |
| 27 | Vehicle Code section 23152, subdivision (b) (Driving With a Blood Alcohol of 0.08% or Higher), |
| 28 | a misdemeanor, with an allegation that his blood alcohol was 0.15% percent or more. |

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On or about June 18, 2009, Respondent pleaded no contest and was found guilty of 1 c. count 1 (violation of Vehicle Code section 23152, subdivision (a)). Count 2 was dismissed. The 2 imposition of sentence was suspended and Respondent was placed on court probation for thirty-3 six (36) months on terms and conditions including two (2) days in county jail (1 day CTS), 4 completion of a three (3) month Level I DUI School, and payment of fines and fees. 5 SECOND CAUSE FOR DENIAL OF APPLICATION 6 (Conviction of Substantially Related Crime(s)) 7 9. Respondent's application is subject to denial under the following section(s) of the 8 Code: 480(a)(1); 480(a)(3) by reference to 4301(1); and/or 4300(c) by reference to 4301(1) and 9 California Code of Regulations, title 16, section 1770, for conviction of a substantially related 10 crime, in that on or about August 5, 2011, in a criminal case titled People v. Gabriel Wong, Case 11 No. 561103 in Alameda County Superior Court, Respondent was convicted of violating Vehicle 12 Code section 23152, subdivision (a) (Driving While Under the Influence of Alcohol/Drug), a 13 misdemeanor. The conviction was entered as follows: 14 On or about April 30, 2010, Respondent was observed by University of California 15 a. 16 (Berkeley) Police Department officer(s) driving a vehicle that failed to stop properly at a stop sign, a flashing red light, and a subsequent stop sign. Respondent was pulled over, at which time 17 the officer(s) detected the odor of alcohol coming from the vehicle. Respondent was unable to 18 successfully perform Field Sobriety Tests (FSTs), and refused to provide a blood or urine sample. 19 b. On or about April 30, 2010, Respondent was charged by Complaint in Case No. 20 21 561103 in Alameda County Superior Court with violating Vehicle Code section 23152, 22 subdivision (a) (Driving While Under the Influence of Alcohol/Drug), a misdemeanor, with an allegation of Respondent's prior June 18, 2009 conviction as described above. 23

c. On or about August 5, 2011, Respondent pleaded no contest and was found guilty of
violating Vehicle Code section 23152, subdivision (a). Imposition of sentence was suspended
and Respondent was placed on court probation for thirty-six (36) months on terms and conditions
including ten (10) days in county jail (1 day CTS), completion of an eighteen (18) month Multiple
Offender Drinking Driver Program, and payment of fines and fees.

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| 1 | THIRD CAUSE FOR DENIAL OF APPLICATION | | |
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| 2 | (Conviction of Alcohol or Drug-Involved Crimes) | | |
| 3 | 10. Respondent's application is subject to denial under the following section(s) of the | | |
| 4 | Code: 480(a)(3) by reference to 4301(k); and/or 4300(c) by reference to 4301(k), in that, as | | |
| 5 | described in paragraphs 8 and 9 above, Respondent was convicted of more than one misdemeanor | | |
| 6 | involving the use or consumption of an alcoholic beverage or a dangerous drug. | | |
| 7 | FOURTH CAUSE FOR DENIAL OF APPLICATION | | |
| 8 | (Dangerous or Injurious Use of Alcohol/Drug) | | |
| 9 | 11. Respondent's application is subject to denial under the following section(s) of the | | |
| 10 | Code: 480(a)(3) by reference to 4301(h); and/or 4300(c) by reference to 4301(h), in that, as | | |
| 11 | described in paragraphs 8 and 9 above, Respondent made dangerous or injurious use of alcohol. | | |
| 12 | FIFTH CAUSE FOR DENIAL OF APPLICATION | | |
| 13 | (Unprofessional Conduct) | | |
| 14 | 12. Respondent's application is subject to denial under the following section(s) of the | | |
| 15 | Code: 480(a)(3) by reference to 4301; and/or 4300(c) by reference to 4301, in that, as described | | |
| 16 | in paragraphs 8 through 11 above, Respondent engaged in unprofessional conduct. | | |
| 17 | PRAYER | | |
| 18 | WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, | | |
| 19 | and that following the hearing, the Board of Pharmacy issue a decision: | | |
| 20 | 1. Denying the application of Gabriel Wong for an Intern Pharmacist License; | | |
| 21 | 2. Taking such other and further action as deemed necessary and proper. | | |
| 22 | DATED: 5/3/14 ()ugine Dud | | |
| 23 | FIRGINIA HEROLD Executive Officer | | |
| 24 | Board of Pharmacy Department of Consumer Affairs | | |
| 25 | State of California Complainant | | |
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| | STATEMENT OF ISSUES (Case No. 5105) | | |