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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. 5333

14 **JUSTIN ALLEN RAMSEY**
15 **Pharmacist License Applicant**

STATEMENT OF ISSUES

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 December 26, 2013, the Board of Pharmacy, Department of Consumer
23 Affairs received a Retake Application for Pharmacist Licensure and Examination from Justin
24 Allen Ramsey (Respondent). On or about December 21, 2013, Justin Allen Ramsey certified
25 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
26 application. The Board denied the application on September 3, 2014.

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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 (Code) unless otherwise indicated.

5 4. Section 4300(c) of the Code states: "The board may refuse a license to any applicant
6 guilty of unprofessional conduct."

7 **STATUTORY PROVISIONS**

8 5. Section 475 of the Code states:

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

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

13 (2) Conviction of a crime.

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

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

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

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

24 6. Section 480 of the Code states:

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

27 (1) Been convicted of a crime. A conviction within the meaning of this
28 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 (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:

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(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.

....

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

....

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
it evidences present or potential unfitness of a licensee or registrant to perform the
functions authorized by his license or registration in a manner consistent with the
public health, safety, or welfare.

6 **FIRST CAUSE FOR DENIAL OF APPLICATION**

7 **(April 22, 2014 Criminal Conviction for DUI on March 7, 2014)**

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

12 a. On April 22, 2014, in a criminal proceeding entitled *People of the State of*
13 *California vs. Justin Allen Ramsey*, in San Diego County Superior Court, case number
14 CN330412, Respondent was convicted on his plea of guilty of violating Vehicle Code section
15 23152(b), driving with a blood alcohol concentration (BAC) of .08 percent or more, a
16 misdemeanor. Pursuant to a plea agreement, the court dismissed an additional count of violating
17 Vehicle Code section 23152(a), driving under the influence of alcohol/drugs. The court certified
18 Respondent's BAC as .15 percent.

19 b. As a result of the conviction, Respondent was granted five years summary
20 probation, and ordered committed to the custody of the sheriff for two days, with pre-custody
21 credit for two days. Respondent was further ordered to complete First Conviction Program and
22 MADD Victim Impact Panel session, complete a total of 30 hours volunteer work, pay fines, fees,
23 and restitution, and comply with the terms of DUI probation

24 c. The facts that led to the conviction are that shortly before midnight, on March
25 7, 2014, a patrol deputy with the San Diego County Sheriff's Department observed a vehicle
26 driven by Respondent at a high rate of speed in the city of Vista. The deputy conducted a traffic
27 stop and made contact with Respondent. A records check revealed that Respondent had been
28 arrested for driving under the influence, and hit and run on January 5, 2004. The deputy observed

1 the odor of an alcoholic beverage emanating from Respondent, his eyes were bloodshot and
2 watery, and Respondent admitted to consuming beers earlier in the evening. Respondent did not
3 perform all of the field sobriety tests as explained and demonstrated by the officer. Respondent
4 provided two breath samples which were analyzed by the Alco-Sensor V with a BAC of .156 and
5 .16 percent, respectively. Respondent was arrested for driving under the influence. During
6 booking, Respondent provided a blood sample which was subsequently analyzed with a BAC of
7 .17 percent.

8 **SECOND CAUSE FOR DENIAL OF APPLICATION**

9 **(Dangerous Use of Alcohol)**

10 13. Respondent's application is subject to denial under section 480(a)(3)(A) of the Code
11 in that he operated a motor vehicle while impaired by alcohol on March 7, 2014, as described in
12 paragraph 12, above. Such conduct would be grounds for discipline under section 4301(h) of the
13 Code for a licensed pharmacist.

14 **DISCIPLINARY CONSIDERATIONS**

15 14. To determine whether Respondent's application is subject to denial, pursuant to
16 California Code of Regulations, title 16, section 1769, Complainant alleges the following:

17 a. In a letter written by Respondent, dated May 9, 2014, he stated that on the
18 evening of January 5, 2004, he lost control of his vehicle and collided with a parked truck.
19 Respondent left his vehicle at the scene and got a ride home without making any attempt to notify
20 the owner of the truck, or leave his contact information. Respondent stated that when he arrived
21 home, he drank an "unmeasured amount of vodka to calm [his] nerves." When police arrived, he
22 denied having consumed alcohol, but later admitted to the officers that he had consumed alcohol
23 at his residence. Respondent stated that he provided a breath sample at his residence which was
24 analyzed with a BAC of .12 percent. Respondent was arrested for DUI, and hit and run driving.

25 b. On February 11, 2004, a complaint was filed with the San Diego County
26 Superior Court charging Respondent with violating Vehicle Code section 20002(a), hit and run
27 driving, a misdemeanor. On March 16, 2004, Respondent pled guilty to and was convicted of
28 violating two infractions of the Vehicle Code.

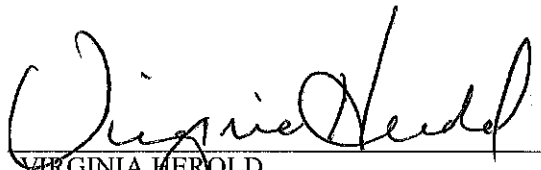
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PRAYER

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

1. Denying the application of Justin Allen Ramsey for a Pharmacist License;
2. Taking such other and further action as deemed necessary and proper.

DATED: 1/17/15



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

SD2014708175