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7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Statement of Issues  
11 Against:

Case No. 5460

12 **VICTOR LEE**

**STATEMENT OF ISSUES**

13 **Pharmacist License Applicant**

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 September 17, 1999, the Board of Pharmacy ("Board"), Department of  
21 Consumer Affairs, issued Pharmacy Intern Permit No. INT 9492 to Victor Lee ("Respondent").

22 3. On or about April 16, 2003, the Board received an application for Pharmacist  
23 Licensure Examination from Respondent. The Board denied the Application on June 6, 2003.

24 4. On or about November 10, 2003, the Board filed Accusation and Statement of Issues  
25 No. 2664 against Respondent.

26 5. On or about February 13, 2004, the Board issued its Decision and Order in Case No.  
27 2664, accepting Respondent's application for a pharmacist license, but immediately revoking that  
28 license and placing it on probation for three years, with terms and conditions.



1           “(1) Been convicted of a crime. A conviction within the meaning of this section means a plea  
2 or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is  
3 permitted to take following the establishment of a conviction may be taken when the time for  
4 appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order  
5 granting probation is made suspending the imposition of sentence, irrespective of a subsequent  
6 order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

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

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

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

14           ....

15           “(c) Notwithstanding any other provisions of this code, a person shall not be denied a license  
16 solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or  
17 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to  
18 Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.”

19           12. Section 4300, subdivision (c), states:

20           “The board may refuse a license to any applicant guilty of unprofessional conduct. The board  
21 may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty  
22 of unprofessional conduct and who has met all other requirements for licensure. The board may  
23 issue the license subject to any terms or conditions not contrary to public policy, including, but not  
24 limited to, the following:

25           “(1) Medical or psychiatric evaluation.

26           “(2) Continuing medical or psychiatric treatment.

27           “(3) Restriction of type or circumstances of practice.

28           “(4) Continuing participation in a board-approved rehabilitation program.

1       “(5) Abstention from the use of alcohol or drugs.

2       “(6) Random fluid testing for alcohol or drugs.

3       “(7) Compliance with laws and regulations governing the practice of pharmacy.”

4       13. Section 4301 states, in pertinent part:

5       “The board shall take action against any holder of a license who is guilty of unprofessional  
6       conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

7       Unprofessional conduct shall include, but is not limited to, any of the following:

8       ....

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

14       ....

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

17       ....

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

1 this provision. The board may take action when the time for appeal has elapsed, or the judgment of  
2 conviction has been affirmed on appeal or when an order granting probation is made suspending  
3 the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal  
4 Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or  
5 setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

6 ....

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

11 14. Section 4060 states, in pertinent part:

12 “A person shall not possess any controlled substance, except that furnished to a person upon  
13 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
14 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-  
15 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician  
16 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a  
17 pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the  
18 possession of any controlled substance by a manufacturer, wholesaler, third-party logistics  
19 provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian,  
20 naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, if in stock  
21 in containers correctly labeled with the name and address of the supplier or producer.

22 “This section does not authorize a certified nurse-midwife, a nurse practitioner, a physician  
23 assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.”

#### 24 **REGULATORY PROVISIONS**

25 15. California Code of Regulations, title 16, section 1770, states:

26 “For the purpose of denial, suspension, or revocation of a personal or facility license  
27 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
28 crime or act shall be considered substantially related to the qualifications, functions or duties of a

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

4 **CONTROLLED SUBSTANCES AND DANGEROUS DRUGS**

5 16. Xanax, a brand name for alprazolam, is an anti-anxiety benzodiazepine and a Schedule  
6 IV controlled substance as designated by Health and Safety Code section 11057, subdivision  
7 (d)(1), and is categorized as a dangerous drug pursuant to Business and Professions Code section  
8 4022.

9 **FIRST CAUSE FOR DENIAL OF APPLICATION**

10 **(Conviction of a Substantially Related Crime)**

11 17. Respondent's application is subject to denial under section 4300, section 4301,  
12 subdivision (l), and section 480, subdivision (a)(1), in conjunction with California Code of  
13 Regulations, title 16, section 1770, in that Respondent was convicted of a crime substantially  
14 related to the qualifications, functions, and duties of a pharmacist. The circumstances are as  
15 follows:

16 a. On or about September 30, 2002, after pleading guilty, Respondent was convicted of a  
17 misdemeanor for violating Health and Safety Code section 11377, subdivision (a) [possession of a  
18 controlled substance], in the criminal proceeding entitled *The People of the State of California v.*  
19 *Victor Lee* (Super. Ct. Los Angeles County, 2002, No. 2AL01291.)

20 b. On or about March 25, 2002, Respondent was arrested by the Monterey Park Police  
21 Department following a traffic stop for a violation of Vehicle Code section 22350 (speeding).  
22 During a consented search of Respondent's vehicle, the controlled substance Xanax was found.  
23 Respondent then admitted to the arresting officer that he was in possession of the Xanax without a  
24 prescription, that he occasionally used Xanax without a prescription, and that he “took two  
25 Ecstasy pills on Friday afternoon.”

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**SECOND CAUSE FOR DENIAL OF APPLICATION**

**(Possession of Controlled Substances and Dangerous Drugs)**

18. Respondent's application is subject to denial under section 4300, section 4301, subdivision (j), and section 480, subdivision (a)(3), in conjunction with section 4060, on the grounds of unprofessional conduct, in that Respondent, by his own admission, was in possession of Xanax without a prescription and had recently taken Ecstasy, an illegal controlled substance. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 17 as though set forth fully.

**THIRD CAUSE FOR DENIAL OF APPLICATION**

**(Use of Controlled Substances and Dangerous Drugs)**

19. Respondent's application is subject to denial under section 4300, section 4301, subdivision (h), and section 480, subdivision (a)(3), on the grounds of unprofessional conduct, in that Respondent, by his own admission, administered to himself the controlled substances and dangerous drugs Xanax and Ecstasy. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 17 as though set forth fully.

**FOURTH CAUSE FOR DENIAL OF APPLICATION**

**(Unprofessional Conduct)**

20. Respondent's application is subject to denial under section 4300, subdivision (c), in conjunction with section 4301 and section 480, subdivision (a)(3), on the grounds of unprofessional conduct, in that Respondent committed acts which led to discipline against his previously issued pharmacist license. The circumstances include that Respondent's previously issued Original Pharmacist License No. RPH 55289 was placed on probation for three years on February 13, 2004, in the Board's Decision and Order in Case No. 2664. That order is now final. Respondent subsequently surrendered his pharmacist license on October 23, 2008. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 17 through 19 as though set forth fully.

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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 Victor Lee for a Pharmacist License; and,
2. Taking such other and further action as deemed necessary and proper.

DATED: 9/11/15 

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

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