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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. 5500

12 **KAMAL ELSAYED AHMED HAMOUDA**

OAH No. 2015100285

13 **Intern Pharmacist Registration Applicant**

**FIRST AMENDED 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 September 8, 2014, the Board of Pharmacy ("Board") received an
21 application for an Intern Pharmacist Registration from Kamal Elsayed Ahmed Hamouda
22 ("Respondent"). On or about August 19, 2014, Kamal Elsayed Ahmed Hamouda certified under
23 penalty of perjury to the truthfulness of all statements, answers, and representations in the
24 application. The Board denied the application on March 27, 2015.

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.

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

6

7 "(j) The violation of any of the statutes of this state, of any other state, or of the United
8 States regulating controlled substances and dangerous drugs.

9

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

14

15 7. Section 4060 of the Code states, in pertinent part:

16 "No person shall possess any controlled substance, except that furnished to a person upon
17 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
18 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
19 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
20 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
21 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
22 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply
23 to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
24 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
25 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
26 labeled with the name and address of the supplier or producer."

27

1 8. Health and Safety Code Section 11375 makes it unlawful to possess alprazolam (i.e.,
2 "Xanax") without a prescription.

3 **CONTROLLED SUBSTANCE**

4 9. Xanax, a brand name for alprazolam, is a Schedule IV controlled substance pursuant
5 to Health and Safety Code section 11057, subdivision (d)(1) and is a dangerous drug pursuant to
6 Code section 4022.

7 **FACTUAL BACKGROUND**

8 10. On December 5, 2008 at approximately 3:35 a.m., a Los Angeles Police Department
9 officer observed Respondent operating his vehicle in an unsafe manner by weaving between traffic
10 lanes and colliding with the curb several times. After pulling Respondent over, the officer noticed
11 that Respondent had slurred speech, droopy eyelids, and a very relaxed face. Respondent's BAC
12 registered 0.0%, leading the officer to conclude that Respondent was under the influence of a
13 central nervous system ("CNS") depressant. The arresting officer found 127 Xanax pills in
14 Respondent's left jacket pocket. At the time of his arrest, Respondent admitted to the officer that
15 he had stolen the Xanax pills from his father who is a registered pharmacist.

16 11. On or about December 8, 2010, after pleading guilty, Respondent was convicted of
17 one misdemeanor count of violating Vehicle Code section 12500, subdivision (a) [driving without
18 a license] in the criminal proceeding entitled *The People of the State of California v. Kamal*
19 *Elsayedahmed Hamouda* (Super. Ct. Los Angeles County, 2010, No 0AV08581). The Court
20 placed Respondent on 12 months probation and ordered him to pay fines. The facts and
21 circumstances underlying this conviction are that Respondent's driver's license had been restricted
22 for one (1) year following a now-expunged DUI conviction. On September 24, 2010, Respondent
23 commenced to drive a vehicle without having taken the steps necessary to have his drivers' license
24 reinstated. On September 24, 2010, Respondent was on was stopped at a sobriety checkpoint at
25 which time a police officer discovered that Respondent did not have a valid driver's license.

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FIRST CAUSE FOR DENIAL OF APPLICATION

(Act Involving Moral Turpitude/Dishonesty)

12. Respondent's application is subject to denial under Code section 480, subdivision (a)(3)(A), in conjunction with section 4301, subdivision (f), in that Respondent committed an act involving moral turpitude and/or dishonesty. The circumstances are that Respondent stole in excess of 120 Xanax pills from his father's pharmacy. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 10, inclusive, as though set forth fully herein.

SECOND CAUSE FOR DENIAL OF APPLICATION

(False Representation of Facts)

13. Respondent's application is subject to denial under Code section 480, subdivision (a)(3)(A), in conjunction with section 4301, subdivision (g), in that Respondent knowingly made false representations of fact in a written document. The circumstances are that in a letter he submitted to the Board for the purpose of explaining the circumstances of a now-expunged DUI conviction Respondent falsely stated that on the night of his arrest he had taken only one half of a Xanax pill and that the pill had been provided to him by his friend. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 10, inclusive, as though set forth fully herein.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Dangerous Use of Controlled Substance)

14. Respondent's application is subject to denial under Code section 480, subdivision (a)(3)(A), in conjunction with section 4301, subdivision (h), in that Respondent used a controlled substance and dangerous drug to the extent and/or in a manner dangerous to himself and the public. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 10, inclusive, as though set forth fully herein.

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1 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

2 **(Violation of State Law Regulating Controlled Substances)**

3 15. Respondent's application is subject to denial under Code section 480, subdivision
4 (a)(3)(A), in conjunction with section 4301, subdivision (j), in that Respondent violated state law
5 regulating controlled substances and dangerous drugs. The circumstances are that Respondent
6 possessed in excess of 120 Xanax pills without a prescription, in violation of Health and Safety
7 Code section 11375. Complainant refers to, and by this reference incorporates, the allegations set
8 forth above in paragraph 10, inclusive, as though set forth fully herein.

9 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

10 **(Violation of the Pharmacy Law)**


11 16. Respondent's application is subject to denial under Code section 480, subdivision
12 (a)(3)(A), in conjunction with section 4301, subdivision (o), in that Respondent violated a
13 provision of the Pharmacy Law (Bus. and Prof. §§ 4000 et seq.). The circumstances are that
14 Respondent possessed in excess of 120 Xanax pills without a prescription, in violation of Business
15 and Professions Code section 4060. Complainant refers to, and by this reference incorporates, the
16 allegations set forth above in paragraph 10, inclusive, as though set forth fully herein.

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 Kamal Elsayed Ahmed Hamouda for an Intern Pharmacist
21 Registration; and
22 2. Taking such other and further action as deemed necessary and proper.

23
24 DATED: 1/6/16


25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant

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13 **Intern Pharmacist Registration Applicant**

14 Respondent.
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19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

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22 ("Respondent"). On or about August 19, 2014, Kamal Elsayed Ahmed Hamouda certified under
23 penalty of perjury to the truthfulness of all statements, answers, and representations in the
24 application. The Board denied the application on March 27, 2015.

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.

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

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

6

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

12

13 "(j) The violation of any of the statutes of this state, of any other state, or of the United
14 States regulating controlled substances and dangerous drugs.

15

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

28

1 system ("CNS") depressant. The arresting officer found 127 Xanax pills in Respondent's left
2 jacket pocket. At the time of his arrest, Respondent admitted to the officer that he had stolen the
3 Xanax pills from his father who is a registered pharmacist.

4 (c) On or about December 8, 2010, after pleading guilty, Respondent was convicted of
5 one misdemeanor count of violating Vehicle Code section 12500, subdivision (a) [driving without
6 a license] in the criminal proceeding entitled *The People of the State of California v. Kamal*
7 *Elsayedahmed Hamouda* (Super. Ct. Los Angeles County, 2010, No 0AV08581). The Court
8 placed Respondent on 12 months probation and ordered him to pay fines.

9 (d) The facts and circumstances underlying the conviction are that Respondent's driver's
10 license was restricted for one year from the date his driving under the influence incident i.e., from
11 December 5, 2008 to December 5, 2009. After December 5, 2009 Respondent was eligible to
12 reinstate his driver's license, but he failed to do so. Nevertheless, Respondent commenced driving
13 and on September 24, 2010, Respondent was stopped at a sobriety checkpoint at which time a
14 police officer discovered that Respondent did not have a valid driver's license.

15 **SECOND CAUSE FOR DENIAL OF APPLICATION**

16 **(Act Involving Moral Turpitude/Dishonesty)**

17 12. Respondent's application is subject to denial under Code section 480, subdivision
18 (a)(3)(A), in conjunction with section 4301, subdivision (f), in that Respondent committed an act
19 involving moral turpitude and/or dishonesty. The circumstances are that Respondent stole in
20 excess of 120 Xanax pills from his father's pharmacy. Complainant refers to, and by this reference
21 incorporates, the allegations set forth above in paragraph 11, subparagraph b, inclusive, as though
22 set forth fully herein.

23 **THIRD CAUSE FOR DENIAL OF APPLICATION**

24 **(False Representation of Facts)**

25 13. Respondent's application is subject to denial under Code section 480, subdivision
26 (a)(3)(A), in conjunction with section 4301, subdivision (g), in that Respondent knowingly made
27 false representations of fact in a written document. The circumstances are that in a letter he
28 submitted to the Board for the purpose of explaining the circumstances of his DUI conviction

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2 and that the pill had been provided to him by his friend. Complainant refers to, and by this
3 reference incorporates, the allegations set forth above in paragraph 11, subparagraphs a and b,
4 inclusive, as though set forth fully herein.

5 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

6 **(Dangerous Use of Controlled Substance)**

7 14. Respondent's application is subject to denial under Code section 480, subdivision
8 (a)(3)(A), in conjunction with section 4301, subdivision (h), in that Respondent used a controlled
9 substance and dangerous drug to the extent and/or in a manner dangerous to himself and the
10 public. Complainant refers to, and by this reference incorporates, the allegations set forth above in
11 paragraph 11, subparagraphs a and b, inclusive, as though set forth fully herein.

12 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

13 **(Violation of State Law Regulating Controlled Substances)**

14 15. Respondent's application is subject to denial under Code section 480, subdivision
15 (a)(3)(A), in conjunction with section 4301, subdivision (j), in that Respondent violated state law
16 regulating controlled substances and dangerous drugs. The circumstances are that Respondent
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18 Code section 11375. Complainant refers to, and by this reference incorporates, the allegations set
19 forth above in paragraph 11, subparagraph b, inclusive, as though set forth fully herein.

20 **SIXTH CAUSE FOR DENIAL OF APPLICATION**

21 **(Violation of the Pharmacy Law)**

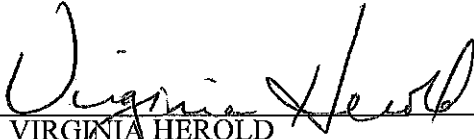
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23 (a)(3)(A), in conjunction with section 4301, subdivision (o), in that Respondent violated a
24 provision of the Pharmacy Law (Bus. and Prof. §§ 4000 et seq.). The circumstances are that
25 Respondent possessed in excess of 120 Xanax pills without a prescription, in violation of Business
26 and Professions Code section 4060. Complainant refers to, and by this reference incorporates, the
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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:

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2. Taking such other and further action as deemed necessary and proper.

DATED: 8/27/15 
VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
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