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2	Attorney General of California ARMANDO ZAMBRANO			
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9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA			
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13	3 ISSUES	ENDED STATEMENT OF		
14				
15	5Respondent,			
16	Complainant alleges:			
17	PARTIES			
18	8 1. Virginia Herold ("Complainant") brings this States	1. Virginia Herold ("Complainant") brings this Statement of Issues solely in her official		
19	capacity as the Executive Officer of the Board of Pharmacy, D	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 Phar	macy ("Board") received an		
21	application for an Intern Pharmacist Registration from Kamal	Elsayed Ahmed Hamouda		
22	2 ("Respondent"). On or about August 19, 2014, Kamal Elsayed	Ahmed Hamouda certified under		
23	penalty of perjury to the truthfulness of all statements, answers	s, and representations in the		
24	4 application. The Board denied the application on March 27, 2	015.		
25	5 JURISDICTION			
26	3. This Statement of Issues is brought before the Boa	rd under the authority of the		
27	7 following laws. All section references are to the Business and	Professions Code unless otherwise		
28	8 indicated.			
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I	FIRS	T AMENDED STATEMENT OF ISSUES		

STATUTORY AND REGULATORY PROVISIONS 1 4, Section 4313 of the Code states 2 "In determining whether to grant an application for licensure or whether to discipline or 3 reinstate a license, the board shall give consideration to evidence of rehabilitation. However, public 4 protection shall take priority over rehabilitation and, where evidence of rehabilitation and public 5 protection are in conflict, public protection shall take precedence," 6 5. Section 480 of the Code states, in pertinent part: 7 "(a) A board may deny a license regulated by this code on the grounds that the applicant has 8 9 one of the following: 10 "(3) (A) Done any act that if done by a licentiate of the business or profession in question, 11 would be grounds for suspension or revocation of license. 12 (B) The board may deny a license pursuant to this subdivision only if the crime or act 13 is substantially related to the qualifications, functions, or duties of the business or profession for 14 which application is made. 15 16 Section 4301 of the Code states, in pertinent part: 17 6. "The board shall take action against any holder of a license who is guilty of unprofessional 18 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. 19 Unprofessional conduct shall include, but is not limited to, any of the following: 20 21 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or 22 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and 23 whether the act is a felony or misdemeanor or not. 24 "(g) Knowingly making or signing any certificate or other document that falsely represents 25 the existence or nonexistence of a state of facts. 26 27 28 2 FIRST AMENDED STATEMENT OF ISSUES

"(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.

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.

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"(o) 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."

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

"No person shall possess any controlled substance, except that furnished to a person upon 16 17 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified 18 19 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, 20 21or 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 to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, 23 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified 24 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly 25 labeled with the name and address of the supplier or producer," 26 27

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FIRST AMENDED STATEMENT OF ISSUES

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

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.

FACTUAL BACKGROUND

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

On or about December 8, 2010, after pleading guilty, Respondent was convicted of 11. 16 one misdemeanor count of violating Vehicle Code section 12500, subdivision (a) [driving without 17 a license] in the criminal proceeding entitled The People of the State of California v. Kamal 18 19 Elsayedahmed Hamouda (Super. Ct. Los Angeles County, 2010, No 0AV08581). The Court placed Respondent on 12 months probation and ordered him to pay fines. The facts and 20 21 circumstances underlying this conviction are that Respondent's driver's license had been restricted for one (1) year following a now-expunged DUI conviction. On September 24, 2010, Respondent 22 commenced to drive a vehicle without having taken the steps necessary to have his drivers' license 23 reinstated. On September 24, 2010, Respondent was on was stopped at a sobriety checkpoint at 24 which time a police officer discovered that Respondent did not have a valid driver's license, 25 111 26

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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 11 (a)(3)(A), in conjunction with section 4301, subdivision (g), in that Respondent knowingly made 12 false representations of fact in a written document. The circumstances are that in a letter he 13 submitted to the Board for the purpose of explaining the circumstances of a now-expunded DUI 14 conviction Respondent falsely stated that on the night of his arrest he had taken only one half of a 15 Xanax pill and that the pill had been provided to him by his friend. Complainant refers to, and by 16 this reference incorporates, the allegations set forth above in paragraph 10, inclusive, as though set 17 forth fully herein. 18

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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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FIRST AMENDED STATEMENT OF ISSUES

FOURTH CAUSE FOR DENIAL OF APPLICATION

(Violation of State Law Regulating Controlled Substances)

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

FIFTH CAUSE FOR DENIAL OF APPLICATION

(Violation of the Pharmacy Law)

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

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:

20 1. Denying the application of Kamal Elsayed Ahmed Hamouda for an Intern Pharmacist
21 Registration; and

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

23 1/6/16 24 DATED: VIRGINIA HEROLD 25 Executive Officer Board of Pharmacy 26 Department of Consumer Affairs State of California 27Complainant LA2015501099 28. 51831591.doo 6

FIRST AMENDED STATEMENT OF ISSUES

1	KAMALA D. HARRIS			
2	Attorney General of California MARC D. GREENBAUM			
3	Supervising Deputy Attorney General ARMANDO ZAMBRANO			
4	Supervising Deputy Attorney General State Bar No. 225325			
5	300 So. Spring Street, Suite 1702 Los Angeles, CA 90013			
6	Telephone: (213) 897-2542 Facsimile: (213) 897-2804			
7	Attorneys for Complainant			
8	BEFORE THE BOARD OF PHARMACY			
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA			
10				
11	In the Matter of the Statement of Issues Case No. 5500			
12	KAMAL ELSAYED AHMED HAMOUDA STATEMENT OF ISSUES			
13	Intern Pharmacist Registration 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 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 STATEMENT OF ISSUES			
	STATEMENT OF ISSUES			

STATUTORY AND REGULATORY PROVISIONS

1 4. Section 4313 of the Code states 2 "In determining whether to grant an application for licensure or whether to discipline or 3 reinstate a license, the board shall give consideration to evidence of rehabilitation. However, public 4 protection shall take priority over rehabilitation and, where evidence of rehabilitation and public 5 protection are in conflict, public protection shall take precedence." 6 Section 480 of the Code states, in pertinent part: 5. 7 "(a) A board may deny a license regulated by this code on the grounds that the applicant has 8 one of the following: 9 "(1) Been convicted of a crime. A conviction within the meaning of this section means a 10 plea or verdict of guilty or a conviction following a plea of nolo contendere. 11 12 "(3) (A) Done any act that if done by a licentiate of the business or profession in question, 13 would be grounds for suspension or revocation of license. 14 (B) The board may deny a license pursuant to this subdivision only if the crime or act 15 is substantially related to the qualifications, functions, or duties of the business or profession for 16 which application is made. 17 18 "(c) Notwithstanding any other provisions of this code, a person shall not be denied a license 19 solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 201203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to 21 Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal." 22 23 6. Section 4301 of the Code states, in pertinent part: 24 "The board shall take action against any holder of a license who is guilty of unprofessional 25 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. 26 Unprofessional conduct shall include, but is not limited to, any of the following: 27 28 2

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

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

"(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.

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

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"(1) The conviction of a crime substantially related to the qualifications, functions, and duties 16 of a licensee under this chapter. The record of conviction of a violation of Chapter 13 17 (commencing with Section 801) of Title 21 of the United States Code regulating controlled 18 substances or of a violation of the statutes of this state regulating controlled substances or 19 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the 20 record of conviction shall be conclusive evidence only of the fact that the conviction occurred. 21 The board may inquire into the circumstances surrounding the commission of the crime, in order to 2.2 fix the degree of discipline or, in the case of a conviction not involving controlled substances or 23 dangerous drugs, to determine if the conviction is of an offense substantially related to the 24 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or 25 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning 26 of this provision. 27

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"(o) 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."

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

7 "No person shall possess any controlled substance, except that furnished to a person upon 8 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor 9 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a 10 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, 11 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of 12 13 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, 14 15 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly 16 labeled with the name and address of the supplier or producer." 17

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

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

"For the purpose of denial, suspension, or revocation of a personal or facility license
pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
crime or act shall be considered substantially related to the 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."

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CONTROLLED SUBSTANCE

Xanax, a brand name for alprazolam, is a Schedule IV controlled substance pursuant 1 2 to Health and Safety Code section 11057, subdivision (d)(1) and is a dangerous drug pursuant to Code section 4022. 3 FIRST CAUSE FOR DENIAL OF APPLICATION 4 (Conviction of Substantially Related Crimes) 5 11. Respondent's application is subject to denial under Code section 480, subdivision 6 (a)(1), in conjunction with California Code of Regulations, title 16, section 1770, in that 7 Respondent was convicted of a crime substantially related to the qualifications, functions, or duties 8 of an intern pharmacist. The circumstances are as follows: 9 (a) On or about January 21, 2009, in the criminal proceeding entitled The People of the 10State of California v. Kamal Elsayedahmed Hamouda (Super. Ct. Los Angeles County, 2010, No. 11 8MP15645), Respondent entered a plea of nolo contendere and was convicted of one 12 misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving a vehicle 13 under the influence of an alcoholic beverage or drug or the combined influence of both]¹. The 14 Court placed Respondent on probation for a period of 36 months and ordered him to complete a 15 drug and alcohol program, attend 10 Alcoholics Anonymous meetings and perform 20 days of 16 CalTrans work. 17 (b) The facts and circumstances underlying the conviction are that on December 5, 2008 18 at approximately 3:35 a.m., a Los Angeles Police Department officer observed Respondent 19 operating his vehicle in an unsafe manner by weaving between traffic lanes and colliding with the 20 curb several times. After pulling Respondent over, the officer noticed that Respondent had slurred 21 speech, droopy eyelids, and a very relaxed face. Respondent's BAC registered 0.0%, leading the 22 officer to conclude that Respondent was under the influence of a central nervous 23 111 24 25 26

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Vehicle Code section 23152 was amended in 2012 such that currently subdivision (a) relates to 27 only alcoholic beverages, subdivision (e) relates to only drugs, and subdivision (f) relates to the combination of alcoholic beverages and drugs. 28

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

(c) On or about December 8, 2010, after pleading guilty, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 12500, subdivision (a) [driving without a license] in the criminal proceeding entitled *The People of the State of California v. Kamal Elsayedahmed Hamouda* (Super. Ct. Los Angeles County, 2010, No 0AV08581). The Court 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.

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SECOND CAUSE FOR DENIAL OF APPLICATION

(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 24

THIRD 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 his DUI conviction

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1	Respondent falsely stated that on the night of his arrest he had taken only one half of a Xanax pill	
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	
17	possessed in excess of 120 Xanax pills without a prescription, in violation of Health and Safety	
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)	
22	16. Respondent's application is subject to denial under Code section 480, subdivision	
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	
27	allegations set forth above in paragraph 11, subparagraph b, inclusive, as though set forth fully	
28	herein.	
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1	<u>PRAYER</u>		
2	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,		
3	and that following the hearing, the Board of Pharmacy issue a decision:		
4	1. Denying the application of Kamal Elsayed Ahmed Hamouda for a Intern Pharmacist		
5	Registration; and		
6	2. Taking such other and further action as deemed necessary and proper.		
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8	DATED: 82715 Ungining feedb		
9	Executive Officer		
10	Board of Pharmacy Department of Consumer Affairs State of California		
11	Complainant		
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	8 STATEMENT OF ISSUES		