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

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

Case No. 5540

13 **HAROLD EUGENE GILLUNG**

STATEMENT OF ISSUES

14 **Pharmacist License Applicant**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer
21 Affairs.

22 2. On or about October 2, 2014, the Board received an application for a Pharmacist
23 License from Harold Eugene Gillung (Respondent). On or about September 29, 2014, Harold
24 Eugene Gillung certified under penalty of perjury to the truthfulness of all statements, answers,
25 and representations in the application. The Board denied the application on May 19, 2015.

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JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 480 of the Code states:

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

(1) Been convicted of a crime. A conviction within the meaning of this 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, 1203.4a, or 1203.41 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.

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

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

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

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

(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license.

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5. Section 4300 of the Code states in relevant part:

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(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, including, but not limited to, the following:

- (1) Medical or psychiatric evaluation.
- (2) Continuing medical or psychiatric treatment.
- (3) Restriction of type or circumstances of practice.
- (4) Continuing participation in a board-approved rehabilitation program.
- (5) Abstention from the use of alcohol or drugs.
- (6) Random fluid testing for alcohol or drugs.
- (7) Compliance with laws and regulations governing the practice of pharmacy.

...

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

STATUTORY AUTHORITY

6. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted 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."

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7. Section 4301 of the Code states in relevant part:

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:

...

(n) The revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter.

....

REGULATIONS

8. 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."

DRUGS

9. Cocaine is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022.

10. Dilaudid, a brand name for hydromorphone, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022.

11. Hydrocodone is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022.

12. Meprazine, also known as Meperidine and pethidine, is a Schedule II controlled substance to Health and Safety Code section 11055, subdivision (c)(17), and a dangerous drug pursuant to Business and Professions Code section 4022.

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1 13. Morphine is a Schedule II controlled substance pursuant to Health and Safety Code
2 section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code
3 section 4022.

4 14. Piperacillin, an antibiotic, is a dangerous drug pursuant to Business and Professions
5 Code section 4022.

6 **FIRST CAUSE FOR DENIAL OF APPLICATION**

7 **(September 22, 2008 – Felony Conviction for Drug Tampering)**

8 15. Respondent's application is subject to denial under Code 480, subsection (a)(1) in that
9 Respondent was convicted of drug tampering, a felony, which is substantially related to the duties
10 and responsibilities of a pharmacist. The circumstances are as follows:

11 a. On or about February 26, 2008, in *United States of America v. Harold Gillung*,
12 in the District Court of the United States, District of South Carolina, Florence Division, Criminal
13 Case No. 4:08-175, Respondent was indicted by a grand jury for violation of Title 18, United
14 States Code, section 1365(a)(4), tampering with drugs, a felony, based on a finding that from
15 February 2006 to in or about August 2006, while working as a pharmacist in the District of South
16 Carolina, Respondent removed Meprozone, a Schedule III controlled substance, from capsules that
17 were to be dispensed by the pharmacy and substituted Hydrocodone, a Schedule III controlled
18 substance, and other substances, into the capsules to replace the Meprozone that he had removed,
19 and such altered capsules were subsequently dispensed to customers of the pharmacy where
20 Respondent worked.

21 b. On July 11, 2008, Respondent pled guilty to violation of Title 18, United States
22 Code, Section 1365(a)(4), tampering with drugs. Respondent admitted that he diverted 50
23 capsules of Meprozone from the pharmacy where he worked for his personal use.

24 c. On September 22, 2008, based on his guilty plea, Respondent was convicted of
25 violation Title 18, United States Code, Section 1365(a)(4), tampering with drugs, a felony.
26 Respondent was sentenced to imprisonment for 12 months in the custody of the United States
27 Bureau of Prisons. Upon release from imprisonment, Respondent was ordered to be on
28 supervised release for a term of three years. While on supervised release, Respondent was

1 ordered to satisfactorily participate in a substance abuse treatment program, to include drug
2 testing, and satisfactorily participate in a mental health treatment program as approved by the U.S.
3 Probation Office.

4 e. On November 24, 2009, after completing 12 months of imprisonment,
5 Respondent was placed on supervised release for a period of three years. On November 8, 2011,
6 Respondent was ordered discharged from supervised release.

7 **SECOND CAUSE FOR DENIAL OF APPLICATION**

8 **(Out of State Discipline – 2008 South Carolina)**

9 16. Respondent's application is subject to denial under Code 480, subsection (a)(3) in that
10 Respondent's pharmacist license issued by the State of South Carolina was revoked, which act if
11 done to a California licensed pharmacist, would be grounds for suspension or revocation of
12 license under Code section 4301, subsection (n), as set forth in paragraph 15, above, which is
13 incorporated here by this reference and as follows:

14 17. On July 16, 2007, after Respondent was indicted by a grand jury with violation of
15 Title 18, United States Code, section 1365(a)(4), tampering with drugs, *In the Matter of: Harold*
16 *E. Gillung, R.Ph.*, the South Carolina Board suspended Respondent's license to practice
17 pharmacy, effective immediately.

18 18. On September 18, 2008, Respondent entered into an Agreement to Relinquish
19 License to Practice Pharmacy with the South Carolina Board. Under the terms of the agreement,
20 Respondent agreed to cease the authorization to practice as a pharmacist immediately, waive
21 further proceedings, and give up forevermore the right to practice as a pharmacist in South
22 Carolina.

23 **THIRD CAUSE FOR DENIAL OF APPLICATION**

24 **(November 16, 1992 Felony Conviction Embezzlement of a Controlled Substance)**

25 19. Respondent's application is subject to denial under Code 480, subsection (a)(1) in that
26 Respondent was convicted of embezzlement of a controlled substance, a felony, which is
27 substantially related to the duties and responsibilities of a pharmacist. The circumstances are as
28 follows:

1 a. On or about November 16, 1992, in Richmond County Superior Court, in the
2 matter *People vs. Harold Gillung*, Respondent pled guilty to one count of embezzlement of a
3 controlled substance, for which he received a sentence of two years imprisonment, with the
4 imprisonment suspended in favor of probation, and was ordered to surrender his pharmacist
5 license until its return was approved by a judge of the Superior Court.

6 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

7 **(Out of State Discipline – North Carolina 1993)**

8 20. Respondent's application is subject to denial under Code 480, subsection (a)(3) in that
9 Respondent's pharmacist license issued by the State of North Carolina was revoked, which act if
10 done to a California licensed pharmacist, would be grounds for suspension or revocation of
11 license under Code section 4301, subsection (n), as set forth in paragraph 19, above, which is
12 incorporated here by this reference and as follows:

13 a. On May 10, 1993, the North Carolina Board of Pharmacy issued a final order in the
14 case captioned *In the Matter of: Harold Eugene Gillung*, license no. 11532, revoking
15 Respondent's license to practice pharmacy in North Carolina.

16 b. The North Carolina Board found as fact that Respondent, while pharmacist manager
17 of the Richmond Memorial Hospital in Rockingham, North Carolina:

18 (1) took morphine injectables from the hospital pharmacy from December of 1991
19 through May of 1992 and administered the morphine to himself, using about 100mg a day;

20 (2) took cocaine from the hospital pharmacy in March of 1992 and used the cocaine
21 himself;

22 (3) took Dilaudid tablets from the hospital pharmacy and administered the drugs to
23 himself;

24 (4) took Fentanyl from the hospital pharmacy;

25 (5) attempted to conceal his thefts by replacing the morphine with saline and the
26 cocaine with Piperacilin, by regluing and replacing factory seals on the morphine containers, and
27 by altering narcotics logs; and
28

1 (6) pled guilty to one count of embezzlement of a controlled substance, for which he
2 received a sentence of two years imprisonment, with the imprisonment suspended in favor of
3 probation, and was ordered to surrender his pharmacist license until its return was approved by a
4 judge of the Superior Court.

5 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

6 **(Out of State Discipline – South Carolina 1994)**

7 21. Respondent's application is subject to denial under Code 480, subsection (a)(3) in that
8 Respondent's pharmacist license issued by the State of South Carolina was revoked, which act if
9 done to a California licensed pharmacist, would be grounds for suspension or revocation of
10 license under Code section 4301, subsection (n), as set forth in paragraph 19 through 20, above,
11 which are incorporated here by this reference and as follows:

12 a. On June 30, 1994, the South Carolina State Board of Pharmacy issued a final
13 order in the case captioned, *In the Matter of: Harold Eugene Gillung, R.Ph.*, license no. 7285,
14 suspending Respondent's license to practice pharmacy in South Carolina for not less than two
15 years.

16 b. The circumstances are as follows: Respondent became addicted to morphine
17 while working as a pharmacist in Pennsylvania in 1984 or 1985. Respondent entered drug
18 treatment voluntarily in 1987. Respondent moved from Pennsylvania to South Carolina after he
19 completed his drug treatment in 1987. After he was released from drug treatment in 1987,
20 Respondent did not avail himself to any follow-up care. Respondent obtained a license to practice
21 pharmacy in South Carolina in September 1989. Respondent obtained a license to practice
22 pharmacy in North Carolina through reciprocity with South Carolina in October 1991, and took
23 the position of pharmacist manager and director of the pharmacy of Richmond Memorial
24 Hospital. Respondent relapsed into drug abuse in December 1991, abusing morphine and other
25 controlled substances both while at work and away from work, until May 1992, when he again
26 entered treatment. The South Carolina State Board of Pharmacy based its decision on the findings
27 of the North Carolina Board of Pharmacy, and on a finding that Respondent had checked "no" to
28 a question on his 1994 license renewal application which asked whether he had been convicted

1 for violations of criminal law or had any disciplinary action imposed by any other state board of
2 pharmacy since his last renewal when in fact Respondent had been disciplined by the North
3 Carolina Board of Pharmacy on May 10, 1993.

4 c. Respondent was ordered eligible to reinstate his South Carolina license after his
5 suspension if he participated in a South Carolina Board of Pharmacy approved aftercare program
6 and submitted quarterly progress reports to the South Carolina Board during the period of his
7 suspension, and did not abuse drugs during this period.

8 **SIXTH CAUSE FOR DENIAL OF APPLICATION**

9 **(Out of State Discipline – Pennsylvania 1995)**

10 22. Respondent's application is subject to denial under Code 480, subsection (a)(3) in that
11 Respondent's pharmacist license issued by the State of Pennsylvania was revoked, which act if
12 done to a California licensed pharmacist, would be grounds for suspension or revocation of
13 license under Code section 4301, subsection (n), as set forth in paragraphs 19 through 21, above,
14 which are incorporated here by this reference and as follows:

15 a. On or about November 29, 1994, in the matter of the *Commonwealth of*
16 *Pennsylvania, Bureau of Professional and Occupational Affairs v. Harold E. Gillung, R.Ph.*, in
17 file number 92-54-02486, the Pennsylvania State Board of Pharmacy (Pennsylvania Board) filed a
18 notice and order to show cause alleging that Respondent violated sections 5(a)(5) and (10) of the
19 Pennsylvania Pharmacy Act, Act of September 27, 1961, P.L. 1700, as amended, 63 P.S. sections
20 390-5(a)(5) and (1), as a result of having his license to practice pharmacy in North Carolina
21 revoked on May 10, 1993, and his license to practice pharmacy in South Carolina suspended for a
22 period of not less than two years on June 30, 1994.

23 b. On or about February 8, 1995, Respondent admitted the allegations in the order
24 to show cause, and alleged mitigating circumstances.

25 c. On January 10, 1995, a formal hearing was held before the Pennsylvania Board.
26 The Pennsylvania Board found as fact that Respondent while pharmacist manager of the
27 Richmond Memorial Hospital in Rockingham, North Carolina: (1) took morphine injectables
28 from the hospital pharmacy from December of 1991 through May of 1992 and administered the

1 morphine to himself, using about 100 mg a day; (2) took cocaine from the hospital pharmacy in
2 March of 1992 and used the cocaine on himself; (3) took Dilaudid tablets from the hospital
3 pharmacy and administered the drugs to himself; (4) took Fentanyl from the hospital pharmacy;
4 and (5) attempted to conceal his thefts by replacing the morphine with saline and the cocaine with
5 Piperacillin, by regluing and replacing factory seals on the morphine containers, and by altering
6 narcotics logs. The Pennsylvania Board also found as fact that Respondent pleaded guilty on
7 November 17, 1992, in Richmond County Superior Court to one count of embezzlement of a
8 controlled substance, for which he received a sentence of two years imprisonment, with the
9 imprisonment suspended in favor of probation, and was ordered to surrender his pharmacist
10 license until its return was approved by a judge of the Superior Court. The Pennsylvania Board
11 also found as fact that the South Carolina State Board of Pharmacy issued a final order on June
12 30, 1994, in the case captioned *In the Matter of: Harold Eugene Gillung, R.Ph.*, License No.
13 7285, suspending the Respondent's license to practice pharmacy in South Carolina for not less
14 than two years based on the findings of the North Carolina Board, and a finding that Respondent
15 had checked "no" to a question on his 1994 license renewal application which asked whether he
16 had been convicted for violations of criminal law or had any disciplinary action imposed by any
17 other state board of pharmacy since his last renewal when in fact Respondent had been disciplined
18 by the North Carolina Board on May 10, 1993.

19 d. On May 16, 1995, the Pennsylvania Board suspended Respondent's license to
20 practice pharmacy indefinitely. The Pennsylvania Board further ordered that Respondent may
21 apply for reinstatement only after his licenses to practice pharmacy in North Carolina and South
22 Carolina are reinstated, and that the Board will then reinstate Respondent's license if he proves at
23 a formal hearing that he has maintained unbroken sobriety for the three years preceding his formal
24 hearing, and has maintained his continuing education during the period of his suspension.

25 **SEVENTH CAUSE FOR DENIAL OF APPLICATION**

26 **(Engaged in Acts Involving Dishonesty, Fraud, or Deceit)**

27 23. Respondent's application is subject to denial under Code 480, subsection (a)(2) in that
28 Respondent engaged in acts involving dishonesty, fraud or deceit with the intent to substantially

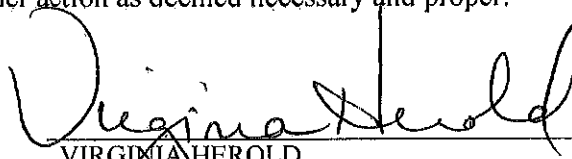
1 benefit himself or substantially injury another which is substantially related to the duties and
2 responsibilities of a pharmacist , as set forth in paragraph 15 through 22, above, which are
3 incorporated here by this reference.

4 **PRAYER**

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

- 7 1. Denying the application of Harold Eugene Gillung for a Pharmacist License;
8 2. Taking such other and further action as deemed necessary and proper.

9
10 DATED: 12/21/15



11 VIRGINIA HEROLD
12 Executive Officer
13 Board of Pharmacy
14 Department of Consumer Affairs
15 State of California
16 *Complainant*

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