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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. 5570

13 **KAREN KLOVANISH POWERS,**
14 **AKA KAREN KLOVANISH FISHER**

STATEMENT OF ISSUES

15 **Pharmacist License Applicant**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On October 31, 2014, the Board of Pharmacy, Department of Consumer Affairs
24 received an application for a Pharmacist License from Karen Klovanish Powers, also known as
25 Karen Klovanish Fisher (Respondent). On October 27, 2014, Karen Klovanish Powers certified
26 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
27 application. The Board denied the application on July 9, 2015.

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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, subdivision (c) of the Code states:

6 The board may refuse a license to any applicant guilty of unprofessional conduct.

7 **STATUTORY PROVISIONS**

8 5. Section 475 of the Code, in pertinent part states:

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

11

(2) Conviction of a crime.

12

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

15

16 6. Section 480 of the Code, in pertinent part states:

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

19 (1) Been convicted of a crime. A conviction within the meaning of
20 this section means a plea or verdict of guilty or a conviction following a plea of
21 nolo contendere. Any action that a board is permitted to take following the
22 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.

23

24 (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.

25

26 7. Section 482 of the Code states:

27 Each board under the provisions of this code shall develop criteria to
28 evaluate the rehabilitation of a person when:

- 1 (a) Considering the denial of a license by the board under section 480; or
2 (b) Considering suspension or revocation of a license under section 490.

3 Each board shall take into account all competent evidence of rehabilitation
4 furnished by the applicant or licensee.

5 8. Section 493 of the Code states:

6 Notwithstanding any other provision of law, in a proceeding conducted by
7 a board within the department pursuant to law to deny an application for a license
8 or to suspend or revoke a license or otherwise take disciplinary action against a
9 person who holds a license, upon the ground that the applicant or the licensee has
10 been convicted of a crime substantially related to the qualifications, functions, and
11 duties of the licensee in question, the record of conviction of the crime shall be
12 conclusive evidence of the fact that the conviction occurred, but only of that fact,
13 and the board may inquire into the circumstances surrounding the commission of
14 the crime in order to fix the degree of discipline or to determine if the conviction
15 is substantially related to the qualifications, functions, and duties of the licensee in
16 question.

17 As used in this section, "license" includes "certificate," "permit,"
18 "authority," and "registration."

19 9. Section 4301 of the Code, in pertinent part states:

20 The board shall take action against any holder of a license who is guilty of
21 unprofessional conduct or whose license has been procured by fraud or
22 misrepresentation or issued by mistake. Unprofessional conduct shall include, but
23 is not limited to, any of the following:

24

25 (h) The administering to oneself, of any controlled substance, or the use of
26 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
27 dangerous or injurious to oneself, to a person holding a license under this chapter,
28 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, or any other state, or of
the United States regulating controlled substances and dangerous drugs.

(k) The conviction of more than one misdemeanor or any felony involving
the use, consumption, or self-administration of any dangerous drug or alcoholic
beverage, or any combination of those substances.

(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

1 evidence of unprofessional conduct. In all other cases, the record of conviction
2 shall be conclusive evidence only of the fact that the conviction occurred. The
3 board may inquire into the circumstances surrounding the commission of the
4 crime, in order to fix the degree of discipline or, in the case of a conviction not
5 involving controlled substances or dangerous drugs, to determine if the conviction
6 is of an offense substantially related to the qualifications, functions, and duties of
7 a licensee under this chapter. A plea or verdict of guilty or a conviction following
8 a plea of *nolo contendere* is deemed to be a conviction within the meaning of this
9 provision. The board may take action when the time for appeal has elapsed, or the
10 judgment of conviction has been affirmed on appeal or when an order granting
11 probation is made suspending the imposition of sentence, irrespective of a
12 subsequent order under section 1203.4 of the Penal Code allowing the person to
13 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
14 the verdict of guilty, or dismissing the accusation, information, or indictment.

15

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

19

20 REGULATORY PROVISIONS

21 10. California Code of Regulations, title 16, section 1769, in pertinent part states:

22 (a) When considering the denial of a facility or personal license under
23 section 480 of the Business and Professions Code, the board, in evaluating the
24 rehabilitation of the applicant and his present eligibility for licensing or
25 registration, will consider the following criteria:

26 (1) The nature and severity of the act(s) or offense(s) under
27 consideration as grounds for denial.

28 (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.

29

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

31 For the purpose of denial, suspension, or revocation of a personal or
32 facility license pursuant to Division 1.5 (commencing with section 475) of the

1 Business and Professions Code, a crime or act shall be considered substantially
2 related to the qualifications, functions or duties of a licensee or registrant if to a
3 substantial degree it evidences present or potential unfitness of a licensee or
4 registrant to perform the functions authorized by his license or registration in a
5 manner consistent with the public health, safety, or welfare.

6 DRUGS AT ISSUE

7 12. Carisoprodol has been reclassified on December 12, 2011, when the Drug
8 Enforcement Agency ruled under the Controlled Substances Act that it is a Schedule IV
9 controlled substance effective January 12, 2012, and has since been defined as a dangerous drug
10 under Code section 4022.

11 13. Clozapine is an antipsychotic and is a dangerous drug under Code section 4022.

12 14. Codine, also known as Codeine, is a Schedule II controlled substance as
13 designated by Health and Safety Code, section 11055, subdivision (b)(1)(G), and a dangerous
14 drug under Code section 4022.

15 15. Diazepam is a Schedule IV controlled substance as designated by Health and
16 Safety Code, section 11057, subdivision (d)(9), and is a dangerous drug under Code section
17 4022.

18 16. Epedrine, also known as Ephedrine, is a precursor of Methamphetamine, a
19 Schedule II controlled substance as designated by Health and Safety Code section 11055,
20 subdivision (d)(2), and is a dangerous drug under Code section 4022.

21 17. Hydrocodone is a Schedule II controlled substance as designated by Health and
22 Safety Code section 11055, subdivision (b)(1)(I), and is a dangerous drug under Code section
23 4022.

24 18. Methocarbamol is a muscle relaxant and is a dangerous drug under Code section
25 4022.

26 **FIRST CAUSE FOR DENIAL OF APPLICATION**

27 **(May 19, 2003 Conviction for Driving Under the Influence of Drugs on October 9, 2001)**

28 19. Respondent's application for Pharmacist License is subject to denial under Code
sections 475, subdivision (a)(2) and 480, subdivisions (a)(1) and (a)(3)(A) in that she was

1 convicted of a crime that is substantially related to the qualifications, duties, and functions of a
2 licensed pharmacist, which would also be a ground for discipline for a licensed pharmacist under
3 Code section 4301, subdivision (I). The circumstances are as follows:

4 a. On May 19, 2003, in a criminal proceeding entitled *The People of the*
5 *State of Indiana v. Karen K. Fisher*, in Boone County Superior Court, Division II Case Number
6 06D02-0110-DF-0928, Respondent was convicted on a jury verdict of violating Indiana Code
7 (IC) section 35-48-4-7, subdivision (a), possession of a controlled substance, a Class D felony,
8 and IC section 9-30-5-1, subdivision (a), operating a motor vehicle with a Schedule I or II
9 controlled substance or its metabolite in the body, a Class C misdemeanor.

10 b. As a result of the convictions, on May 19, 2003, Respondent was
11 sentenced to the Indiana Department of Correction for 60 days for violating IC section 9-30-5-1,
12 subdivision (a), and three years for violating IC section 35-48-4-7, subdivision (a), to be served
13 concurrently, which was suspended. Respondent was sentenced an additional 16 days, with
14 credit for one day served and granted three years supervised probation under certain terms and
15 condition. Respondent was ordered to pay court costs, fines, and fees, and contribute to the
16 alcohol and drug program. Respondent was also ordered to successfully complete a court
17 recommended drug and alcohol program. Respondent's privilege to operate a motor vehicle was
18 suspended for 90 days. On September 18, 2006, Respondent's conviction of possession of a
19 controlled substance, a Class D felony, was ordered reduced to a Class A misdemeanor.

20 c. The facts that led to the convictions are that on October 9, 2001, while
21 driving southbound on interstate I-65 in Zionsville, Indiana, Respondent weaved in both lanes of
22 travel almost striking several vehicles, drove into the median, and swerved into a ditch.
23 Responding officers from the Indiana State Police found Respondent standing by the driver's
24 side of the vehicle, which eventually came to a stop after striking a drainage ditch. On initial
25 contact, an officer noticed Respondent's slurred speech, eyes that appeared tired or sleepy, and
26 poor balance. Respondent was transported to Witham Hospital Toxicology Lab where she
27 provided samples for a chemical test. Respondent was then taken to the Boone County Jail where
28 she took three field sobriety tests, which she failed to perform as explained and demonstrated.

1 During an inventory of Respondent's purse, Respondent was found in possession of prescription
2 bottles separately containing hydrocodone and carisoprodol and a box prescribed to her
3 containing ephedrine. Respondent also had in her purse a prescription bottle for diazepam, which
4 also contained 18 pills of clozapine, and an unmarked bottle containing 79 pills of
5 methocarbamol and 27 pills of Tylenol with codeine.

6 **SECOND CAUSE FOR DENIAL OF APPLICATION**

7 **(Act If Done By Licentiate – Dangerous Use of Drugs)**

8 20. Respondent's application for Pharmacist License is subject to denial under Code
9 sections 475, subdivision (a)(4) and 480, subdivision (a)(3)(A) in that she used narcotic drugs to
10 the extent and in a manner that was dangerous and injurious to herself and to the public, which
11 would also be a ground for discipline for a licensed pharmacist under Code section 4301,
12 subdivision (h) in that the extent of the use impaired the ability of the licensed person to conduct
13 with safety to the public the practice authorized by the license. The circumstances are that on
14 October 9, 2001, while under the combined influence of diazepam and Tylenol with codeine,
15 Respondent operated a motor vehicle in wanton disregard for the safety of persons and property.
16 Respondent had medication in her system when she blacked out and struck a drainage ditch, as
17 detailed in paragraph 19, above.

18 **THIRD CAUSE FOR DENIAL OF APPLICATION**

19 **(Unprofessional Conduct – 2007 Discipline by an Out of State Government Agency)**

20 21. Respondent's application for Pharmacist License is subject to denial under Code
21 section 4301, subdivision (n)(4), in that her license to practice pharmacy in Indiana was
22 disciplined by the State of Indiana Board of Pharmacy (Indiana Board). The circumstances are as
23 follows:

24 a. On January 17, 2007, in an administrative matter entitled *State of Indiana,*
25 *Petitioner, v. Karen Klovanishi Fisher, R.Ph., License Number: 26016658A, Respondent.,* Cause
26 Number: 2001 IBP 0010, pursuant to Indiana Code (IC), title 25, Professions and Occupations,
27 article 1, General Provisions, chapter 9, Health Professions Standards of Practice, section 11,
28 Reinstatement of Suspended Licenses (IC section 25-1-9-11), the Indiana Board issued an Order

1 granting Respondent's Petition for Reinstatement of her pharmacist license on indefinite
2 probation, under certain terms and conditions. In the Order, Respondent was required to take and
3 pass the law examination and the qualifying examination before resuming practice. Respondent
4 was also precluded from petitioning withdrawal of the order of indefinite suspension for five
5 years.

6 b. The facts that led to the discipline are that on June 13, 2002, Respondent's
7 pharmacist license was suspended by the Indiana Board, as detailed in paragraph 26, below. On
8 January 8, 2007, Respondent personally appeared before the Indiana Board to provide
9 information and answer questions concerning her request to reinstate her license as a pharmacist.
10 The Indiana Board found evidence demonstrating that Respondent may practice pharmacy with
11 reasonable skill and safety to the public, but only under restriction.

12 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

13 **(February 17, 2009 Conviction for Reckless Driving on November 5, 2008)**

14 22. Respondent's application for Pharmacist License is subject to denial under Code
15 sections 475, subdivision (a)(2) and 480, subdivisions (a)(1) and (a)(3)(A) in that she was
16 convicted of a crime that is substantially related to the qualifications, duties, and functions of a
17 licensed pharmacist, which would also be a ground for discipline for a licensed pharmacist under
18 Code section 4301, subdivision (l). The circumstances are as follows:

19 a. On February 17, 2009 , in a criminal proceeding entitled *The People of the*
20 *State of California v. Karen Klovansh Fisher*, in San Diego County Superior Court, North
21 County Division, Case Number CN254074, Respondent was convicted on her plea of guilty of
22 violating Vehicle Code (VC) section 23103, subdivision (a) pursuant to VC section 23103.5,
23 reckless driving with measurable alcohol in the blood, a lesser included misdemeanor of VC
24 section 23152, subdivision (b), operating a motor vehicle while having a blood alcohol
25 concentration (BAC) of .08 percent or more. A misdemeanor charge for violation of VC section
26 23152, subdivision (a), driving under the influence of alcohol, was dismissed under a plea
27 bargain.

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1 **SEVENTH CAUSE FOR DENIAL OF APPLICATION**

2 **(Act If Done By Licentiate – Violation of Drug Laws)**

3 25. Respondent's application for Pharmacist License is subject to denial under Code
4 sections 475, subdivision (a)(4) and 480, subdivision (a)(3)(A) in that on October 9, 2001, she
5 committed a Class D felony in violation of IC section 35-48-4-7, subdivision (a), possession of a
6 controlled substance, a statute of the State of Indiana regulating controlled substances and
7 dangerous drugs, as detailed in paragraphs 19 and 20, above, which would also be a ground for
8 discipline for a licensed pharmacist under Code section 4301, subdivision (j).

9 **MATTERS IN AGGRAVATION**

10 **(Unprofessional Conduct – 2002 Discipline by an Out of State Government Agency)**

11 26. Respondent's application for Pharmacist License is subject to denial under Code
12 section 4301, subdivision (n)(4), in that her license to practice pharmacy in Indiana was
13 disciplined by the Indiana Board. The circumstances are as follows:

14 a. On May 22, 2002, pursuant to the Administrative Orders and Procedures
15 Act, IC sections 4-21.5-3 and 25-1-9, in Cause Number: 2001 IBP 0010 entitled *State of Indiana,*
16 *Petitioner, v. Karen Klovanishi Fisher, R.Ph., License Number: 26016658A, Respondent.,* the
17 Indiana Board voted to summarily suspend Respondent's Indiana pharmacist license for a period
18 of one year and five months. The Indiana Board found that an emergency existed and that
19 Respondent presented a clear and immediate danger to the public health and safety if allowed to
20 continue to practice pharmacy in the State of Indiana. On June 13, 2002, under IC sections 25-1-
21 7-7, 25-1-5-3, and 25-26-13-4, the Indiana Board issued a Final Order affirming the suspension.

22 b. The facts that led to the discipline are that Respondent was arrested by the
23 Indiana State Police, as detailed in paragraph 19, above.

24 **PRAYER**

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

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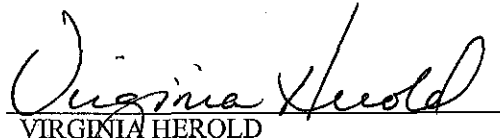
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1. Denying the application of Karen Klovanish Powers, also known as Karen Klovanish Fisher for a Pharmacist License; and

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

DATED: 9/20/15



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

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