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

11 In the Matter of the Statement of Issues
12 Against:
13 **HAKYUNG KIM**
14 **Intern Pharmacist Registration Applicant**
15 Respondent.

Case No. 5747

STATEMENT OF ISSUES

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18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about September 14, 2015, the Board of Pharmacy, Department of Consumer
23 Affairs received an application for an Intern Pharmacist Registration from Hakyung Kim
24 (Respondent). On or about August 18, 2015, Hakyung Kim certified under penalty of perjury to
25 the truthfulness of all statements, answers, and representations in the application. The Board
26 denied the application on December 3, 2015.

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STATUTORY PROVISIONS

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

"(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.

...

"(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."

7. Section 4301 of the Code states, in pertinent 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:

...

"(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.

...

"(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

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

14 CONTROLLED SUBSTANCES

15 8. Marijuana is a Schedule I controlled substance as designated by Health and Safety
16 Code section 11054, subdivision (d)(13).

17 FACTUAL ALLEGATIONS

18 9. On or about October 26, 2009, in Case No. 9PK07103 in Los Angeles County
19 Superior Court, Respondent was charged with possessing one ounce of marijuana or less (Health
20 & Saf. Code, § 11357, subd. (b)). On or about December 29, 2009, the court dismissed the case.
21 The underlying circumstances are that on or about October 16, 2009, Los Angeles County
22 Sheriff's Department officer observed Respondent in a vehicle in a park after hours, smelled
23 marijuana emanating from the vehicle, searched Respondent's wallet, and found a substance
24 resembling marijuana in the wallet .

25 10. On or about May 6, 2014, in *People v. Hakyung Kim*, Case No. 3480715HK in San
26 Bernardino County Superior Court, the court convicted Respondent of possession of one ounce of
27 marijuana or less (Health & Saf. Code, § 11357, subd. (b)) and fined him \$510. Respondent paid
28 the fine in full. The underlying circumstances are that on or about May 24, 2014, the San

1 Bernardino County Sheriff's Department cited Respondent for possessing one ounce or less of
2 marijuana.

3 **FIRST CAUSE FOR DENIAL OF APPLICATION**

4 (Conviction of a Crime)

(Bus. & Prof. Code, § 480, subd. (a)(1))

5 11. Respondent's application for an Intern Pharmacist Registration is subject to denial
6 because he has been convicted of a crime. (Bus. & Prof. Code, § 480, subd. (a)(1).) The
7 circumstances are set forth in paragraph 9, above.

8 **SECOND CAUSE FOR DENIAL OF APPLICATION**

9 (Unprofessional Conduct: Violation of a Statute Regulating Controlled Substances)

10 (Bus. & Prof. Code, §§ 480, subd. (a)(3), 4301, subd. (j); Health & Saf. Code, § 11054, subd.
11 (d)(13))

12 12. Respondent's application for an Intern Pharmacist Registration is subject to denial
13 because he engaged in unprofessional conduct by violating a statute regulating controlled
14 substances. (Bus. & Prof. Code, § 480, subd. (a)(3), 4301, subd. (j); Health & Saf. Code, §
15 11054, subd. (d)(13).) The circumstances are set forth in paragraphs 8 and 9, above.

16 **THIRD CAUSE FOR DENIAL OF APPLICATION**

(Unprofessional Conduct: Conviction of a Substantially Related Crime)

17 (Bus. & Prof. Code, §§ 480, subd. (a)(3), 4301, subd. (l); Health & Saf. Code, § 11054, subd.
18 (d)(13))

19 13. Respondent's application for an Intern Pharmacist Registration is subject to denial
20 because he engaged in unprofessional conduct by being convicted of a substantially related crime
21 involving a controlled substance. (Bus. & Prof. Code, § 480, subd. (a)(3), 4301, subd. (l); Health
22 & Saf. Code, § 11054, subd. (d)(13).) The circumstances are set forth in paragraphs 8 and 9,
23 above.

24 **PRAYER**

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

27 1. Denying the application of Hakyung Kim for a Intern Pharmacist Registration; and

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

DATED: _____

7/19/16

Virginia Herold

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

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