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

12 In the Matter of the Statement of Issues Against:  
13 **SHAWN PAUL REIDY**  
14 **Pharmacist License Applicant**  
15 Respondent.

Case No. 5805

**STATEMENT OF ISSUES**

16  
17 Complainant alleges:

18 **PARTIES**

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

22 2. On August 4, 2015, the Board received an application for a Pharmacist License  
23 from Shawn Paul Reidy (Respondent). On July 18, 2015, Respondent certified under penalty of  
24 perjury to the truthfulness of all statements, answers, and representations in the application. The  
25 Board denied the application on January 29, 2016.

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1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Board, under the authority of the  
3 following laws. All section references are to the Business and Professions Code (Code) unless  
4 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 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 (1) Knowingly making a false statement of material fact, or  
12 knowingly omitting to state a material fact, in an application for a license.

13 (2) Conviction of a crime.

14 (3) Commission of any act involving dishonesty, fraud or deceit  
15 with the intent to substantially benefit himself or another, or substantially injure  
16 another.

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

20 . . . .

21 6. Section 480 of the Code states:

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

24 (1) Been convicted of a crime. A conviction within the meaning of  
25 this section means a plea or verdict of guilty or a conviction following a plea of  
26 *nolo contendere*. Any action that a board is permitted to take following the  
27 establishment of a conviction may be taken when the time for appeal has elapsed,  
28 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 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.

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7. Section 482 of the Code states:

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

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

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

8. 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."

9. Section 4301 of the Code states:

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:

...

(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.

...

(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

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1 a violation of Chapter 13 (commencing with section 801) of Title 21 of the United  
2 States Code regulating controlled substances or of a violation of the statutes of  
3 this state regulating controlled substances or dangerous drugs shall be conclusive  
4 evidence of unprofessional conduct. In all other cases, the record of conviction  
5 shall be conclusive evidence only of the fact that the conviction occurred. The  
6 board may inquire into the circumstances surrounding the commission of the  
7 crime, in order to fix the degree of discipline or, in the case of a conviction not  
8 involving controlled substances or dangerous drugs, to determine if the conviction  
9 is of an offense substantially related to the qualifications, functions, and duties of  
10 a licensee under this chapter. A plea or verdict of guilty or a conviction following  
11 a plea of *nolo contendere* is deemed to be a conviction within the meaning of this  
12 provision. The board may take action when the time for appeal has elapsed, or the  
13 judgment of conviction has been affirmed on appeal or when an order granting  
14 probation is made suspending the imposition of sentence, irrespective of a  
15 subsequent order under section 1203.4 of the Penal Code allowing the person to  
16 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside  
17 the verdict of guilty, or dismissing the accusation, information, or indictment.

18 ...

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

22 ....

### 23 REGULATORY PROVISIONS

24 10. California Code of Regulations, title 16, section 1769 states:

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

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

(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.

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

2 For the purpose of denial, suspension, or revocation of a personal or  
3 facility license pursuant to Division 1.5 (commencing with section 475) of the  
4 Business and Professions Code, a crime or act shall be considered substantially  
5 related to the qualifications, functions or duties of a licensee or registrant if to a  
6 substantial degree it evidences present or potential unfitness of a licensee or  
7 registrant to perform the functions authorized by his license or registration in a  
8 manner consistent with the public health, safety, or welfare.

9 **FIRST CAUSE FOR DENIAL OF APPLICATION**

10 **(December 13, 2006 Conviction for Driving Under the Influence on November 28, 2005)**

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

16 a. On December 13, 2006, in a criminal proceeding entitled *City of Leawood,*  
17 *Plaintiff, vs. Shawn Paul Reidy, Defendant,* in the Municipal Court of the City of Leawood,  
18 Kansas, Respondent was found guilty of violating Leawood City Code Chapter XIV, Traffic,  
19 Article 1, Standard Traffic Ordinance (STO), section 14-101, subdivision 030A, driving under  
20 the influence (DUI) (first offense), Case Number 2005-MD-016546, a misdemeanor; and  
21 subdivisions 030.2, preliminary breath test, and 046, driving on roadways laned for traffic, in  
22 Case Number 2005-MD-015709, both infractions. An infraction charge for operating a motor  
23 vehicle with expired tags, in violation of STO section 14-101, subdivision 198 (a)(1), was  
24 dismissed under a plea bargain.

25 b. As a result of the convictions, on May 16, 2007, Respondent was  
26 sentenced to 90 days in jail, with two days to be served in custody, concurrent with service of  
27 sentence in Case Number CR-2007-214853, detailed in paragraph 14, below, and the balance of  
28 88 days suspended. Respondent was granted one-year probation under certain terms and  
conditions. Respondent was ordered to pay fines and fees.

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1 c. The facts that led to the convictions are that on November 28, 2005,  
2 Respondent drove a vehicle with expired tags. While driving southbound on State Line Road in  
3 Leawood, Kansas, a law enforcement officer noticed Respondent's failure to maintain a single  
4 lane. During an enforcement stop, Respondent refused to submit to a preliminary breath test.  
5 Respondent was charged with DUI while having a blood alcohol concentration of .08 percent or  
6 greater, as measured within two hours of the operation of a motor vehicle.

7 **SECOND CAUSE FOR DENIAL OF APPLICATION**

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

9 13. Respondent's application for a Pharmacist License is subject to denial under Code  
10 section 4301, subdivision (n), in that his Missouri pharmacist license was disciplined by the  
11 Missouri State Board of Pharmacy (Missouri Board). The circumstances are as follows:

12 a. On March 19, 2007, the Administrative Hearing Commission of the  
13 Missouri Board found cause to discipline Respondent under the provisions of title XXII  
14 (Occupations and Professions) of the Missouri Revised Statutes (MRS), Chapter 338  
15 (Pharmacists and Pharmacies), Section 338.055 (Denial, revocation or suspension of license,  
16 grounds for--expedited procedure--additional discipline authorized, when) (MRS section  
17 335.055), subdivisions (2)(6) and (2)(13). In Case Number 2006-003684-V1, entitled *Missouri*  
18 *Board of Pharmacy, Petitioner, v. Shawn P. Reidy, R.Ph., Respondent*, the Missouri Board  
19 revoked Respondent's pharmacist license, numbered 041667. Respondent may not apply for  
20 reinstatement of his pharmacist license for seven years.

21 b. The facts that led to the discipline are that on October 21, 2002, while  
22 employed as a pharmacist at Truman Medical Center Hospital Hill in Kansas City, Missouri,  
23 Respondent reported to work while impaired. Respondent submitted to two breathalyzer tests,  
24 which showed that Respondent was under the influence of alcohol. Respondent's conduct is a  
25 ground for discipline under MRS section 335.055, subdivisions (2)(1), (2)(5), and (2)(13). On  
26 July 7, 2003, the Missouri Board and Respondent executed an agreed Joint Settlement, placing  
27 Respondent's pharmacist license on probation for five years.

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1 c. While on probation, Respondent failed to call in for testing services to  
2 determine compliance with the required abstinence from alcohol. Respondent also tested positive  
3 for alcohol in at least two urinalysis tests. On July 12, 2006, the Missouri Board found  
4 Respondent subject to discipline under MRS section 338.055, subdivisions (2)(6), violation of, or  
5 assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or  
6 regulation adopted pursuant to this chapter, and (2)(13), violation of any professional trust or  
7 confidence.

8 d. On August 31, 2006, In Case Number 2006-003684-V1, entitled *Missouri*  
9 *Board of Pharmacy, Petitioner, v. Shawn P. Reidy, R.Ph., Respondent*, the Missouri Board  
10 placed Respondent's pharmacist license, numbered 041667, on suspension for three months, to  
11 be followed by probation for five years. While on probation, Respondent failed more than once  
12 to call in for testing services to determine compliance with the required abstinence from alcohol.  
13 Respondent also failed on more than one occasion to show up to give a specimen after being  
14 informed he was required to do so. On March 7, 2007, the Missouri Board found Respondent  
15 subject to discipline under MRS section 338.055, subdivisions (2)(6) and (2)(13).

### 16 THIRD CAUSE FOR DENIAL OF APPLICATION

#### 17 **(April 12, 2007 Conviction for DUI with a BAC of .08% or More on December 31, 2006)**

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

23 a. On April 12, 2007, in a criminal proceeding entitled *The City of Overland*  
24 *Park v. Shawn P. Reidy*, in the Municipal Court of the City of Overland Park, Kansas, Case  
25 Number CR-2007-0214853, Respondent pled guilty of violating Overland Park Municipal Code  
26 (OPMC) section 12.04.030, DUI (second offense), a misdemeanor. Charges for violation of city  
27 ordinances OPMC sections 12.04.033, subdivision (a), failure to control speed to avoid a  
28 collision; 12.04.195.1, failure to provide proof of liability insurance; 12.04.119.1, failure to wear

1 seat belt; 12.04.024, leaving the scene of an accident; 12.04.027, duty to report an accident;  
2 12.04.048, subdivision (a), driving on median; 12.04.090, blocking traffic; 12.04.046, failure to  
3 maintain a single lane of traffic; and 12.04.191.2, failure to comply with driver's license  
4 restrictions, were dismissed under a plea bargain.

5 b. As a result of the conviction, on May 10, 2007, Respondent was sentenced  
6 to 180 days in jail, with two days to be served in custody, concurrent with service of sentence in  
7 Case Number 2005-MD-016546 and Case Number 2005-MD-015709, detailed in paragraph 12,  
8 above, three days on house arrest, and the balance of 185 days suspended. Respondent was  
9 granted one-year probation under certain terms and conditions. Respondent was ordered to pay  
10 fines, fees, and costs.

11 c. The facts that led to the convictions are that on December 31, 2006,  
12 Respondent drove on the median of a roadway in Johnson County, Kansas. Respondent drove at  
13 a speed he could not control resulting in a collision that blocked traffic. Respondent left the  
14 scene and failed to report the accident. When apprehended, Respondent was found not to be  
15 wearing a seatbelt and without corrective lenses as required in his driver's license. Respondent  
16 also failed to provide proof of liability insurance, and was under the influence of alcohol to a  
17 degree that rendered him incapable of safely driving a vehicle.

18 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

19 **(Act If Done By Licentiate – Dangerous Use of Alcohol)**

20 15. Respondent's application for a Pharmacist License is subject to denial under Code  
21 sections 475, subdivision (a)(4) and 480, subdivision (a)(3)(A) in that he used alcohol to the  
22 extent and in a manner that was dangerous and injurious to himself and to the public, which  
23 would also be a ground for discipline for a licensed pharmacist under Code section 4301,  
24 subdivision (h) in that the extent of the use impaired the ability of the licensed person to conduct  
25 with safety to the public the practice authorized by the license. The circumstances are that on  
26 November 28, 2005, and December 31, 2006, Respondent drove a motor vehicle in Johnson  
27 County, Kansas, in wanton disregard for the safety of persons and property, as detailed in  
28 paragraphs 12 and 14, above, which are incorporated by reference.



1 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

2 **(Act If Done By Licentiate – Multiple Convictions of Alcohol Related Offenses)**

3 16. Respondent’s application for a Pharmacist License is subject to denial under Code  
4 sections 475, subdivision (a)(4) and 480, subdivision (a)(3)(A) in that on December 13, 2006,  
5 and April 12, 2007, he was convicted of more than one misdemeanor involving the use or  
6 consumption of alcohol, which would also be a ground for discipline for a licensed pharmacist  
7 under Code section 4301, subdivision (k), as described in paragraphs 12 and 14, above, which  
8 are incorporated by reference.

9 **PRAYER**

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

- 12 1. Denying the application of Shawn Paul Reidy for a Pharmacist License; and  
13 2. Taking such other and further action as deemed necessary and proper.

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16 DATED: \_\_\_\_\_

6/10/16



17 VIRGINIA HEROLD  
18 Executive Officer  
19 Board of Pharmacy  
20 Department of Consumer Affairs  
21 State of California  
22 *Complainant*

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