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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. 5949

13 **YAZEN QAMOH**

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
20 official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of
21 Consumer Affairs.

22 2. On January 11, 2016, the Board received an application for a Pharmacist License
23 from Yazen Qamoh (Respondent). On December 2, 2015, Yazen Qamoh certified under penalty
24 of perjury to the truthfulness of all statements, answers, and representations in the application.
25 The Board denied the application on June 24, 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. Code section 4300, subdivision (c) states, in pertinent part:

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

7 **STATUTORY PROVISIONS**

8 5. Code section 475 states, in pertinent part:

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. Code section 480 states, in pertinent part:

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 . . .

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

27

28 7. Code section 482 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.

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

8. Code section 493 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. Code section 4060 states:

A person shall not possess any controlled substance, except that furnished to a person upon 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 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the possession of any controlled substance by a manufacturer, wholesaler, third-party logistics provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, if in stock in containers correctly labeled with the name and address of the supplier or producer.

This section does not authorize a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

10. Code section 4301 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:

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

3 ...

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

7 (o) Violating or attempting to violate, directly or indirectly, or assisting in
8 or abetting the violation of or conspiring to violate any provision or term of this
9 chapter or of the applicable federal and state laws and regulations governing
10 pharmacy, including regulations established by the board or by any other state or
11 federal regulatory agency.

12

13 11. Health & Safety Code section 11054 states, in pertinent part:

14 (a) The controlled substances listed in this section are included in
15 Schedule I.

16 ...

17 (d) Hallucinogenic substances. Unless specifically excepted or unless
18 listed in another schedule, any material, compound, mixture, or preparation,
19 which contains any quantity of the following hallucinogenic substances, or which
20 contains any of its salts, isomers, and salts of isomers whenever the existence of
21 those salts, isomers, and salts of isomers is possible within the specific chemical
22 designation (for purposes of this subdivision only, the term "isomer" includes the
23 optical, position, and geometric isomers):

24 ...

25 (18) Psilocybin.

26

27 12. Health & Safety Code section 11377, subdivision (a) states:

28 Except as authorized by law and as otherwise provided in subdivision (b)
or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of
Division 2 of the Business and Professions Code, every person who possesses any
controlled substance which is (1) classified in Schedule III, IV, or V, and which is
not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except
paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph
(11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of
subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of
Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or
veterinarian, licensed to practice in this state, shall be punished by imprisonment
in a county jail for a period of not more than one year or pursuant to subdivision
(h) of Section 1170 of the Penal Code.

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1 **REGULATORY PROVISIONS**

2 13. California Code of Regulations, title 16, section 1768 states:

3 (a) Where the board has denied an application for a license, the earliest
4 date on which the applicant may reapply for a license is one year after the
effective date of the denial.

5 (b) All competent evidence of rehabilitation presented will be considered
6 upon a reapplication. The board shall use the criteria listed in section 1769 when
considering evidence of rehabilitation.

7 14. California Code of Regulations, title 16, section 1769 states, in pertinent part:

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

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

12 (2) Evidence of any act(s) committed subsequent to the act(s) or
13 crime(s) under consideration as grounds for denial under section 480 of the
Business and Professions Code.

14 (3) The time that has elapsed since commission of the act(s) or
15 crime(s) referred to in subdivision (1) or (2).

16 (4) Whether the applicant has complied with any terms of parole,
probation, restitution or any other sanctions lawfully imposed against the
applicant.

17 (5) Evidence, if any, of rehabilitation submitted by the applicant.

18

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

20 For the purpose of denial, suspension, or revocation of a personal or
21 facility license pursuant to Division 1.5 (commencing with section 475) of the
22 Business and Professions Code, a crime or act shall be considered substantially
23 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
24 registrant to perform the functions authorized by his license or registration in a
manner consistent with the public health, safety, or welfare.

25 **DRUG**

26 16. Psilocybin is a Schedule I controlled substance as designated by Health and
27 Safety Code section 11054, subdivision (d)(18), and is categorized as a dangerous drug under
28 Code section 4022.

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

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

3 17. 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 he violated Alabama Code
5 (AC) section 13A-12-212¹, unlawful possession or receipt of controlled substances, which would
6 be a ground for discipline for a licensed pharmacist under Code section 4301, subdivision (j).

7 The circumstances are as follows:

8 a. On May 18, 2012, Respondent went to the Hangout Music Festival being
9 held at Gulf Shores Parkway in Gulf Shores, Alabama. While at the main gate safety checkpoint,
10 an officer from the Gulf Shores Police Department noticed a bulge near Respondent’s belly
11 button area. During a search of Respondent’s person, the officer found in Respondent’s cargo
12 shorts pocket a plastic bag containing hallucinogenic mushrooms. Respondent was arrested for
13 possession of a controlled substance and processed into the Correction’s Command of the
14 Baldwin County Sheriff’s Office.

15 b. As a result of Respondent’s arrest, on May 21, 2012, in a criminal
16 proceeding entitled *The State of Alabama vs. Yazen Qamoh*, in Baldwin County District Court,
17 District Criminal Case Number DC-2012-002217, Respondent was charged with violation of AC
18 section 13A-12-212, subdivision (A)(1), a felony. On May 25, 2012, under AC section 15-15-
19 20.1, Respondent waived his right to a Grand Jury consideration, made known his intention to
20 plead guilty to an Information duly filed in Baldwin County Circuit Court by the Assistant
21 District Attorney under Rule 2.2(c) of the Alabama Rules of Criminal Procedure, and applied for
22 acceptance in Alabama’s pre-trial intervention program (PTIP)².

23 ¹ (a) A person commits the crime of unlawful possession of controlled substance if:
24 (1) Except as otherwise authorized, he possesses a controlled substance enumerated in
25 Schedules I through V.
26 (2) He obtains by fraud, deceit, misrepresentation or subterfuge or by the alteration of a
27 prescription or written order or by the concealment of a material fact or by the use of a false name
28 or giving a false address, a controlled substance enumerated in Schedules I through V.
(b) Unlawful possession of a controlled substance is a Class C felony. (Alabama Code 2010)

² Alabama’s Pre-Trial Intervention Program for Non-Habitual Offenders is similar to California’s
Deferred Entry of Judgment Program.

1 c. On June 8, 2012, in a criminal proceeding entitled *The State of Alabama*
2 *vs. Yazen Qamoh*, in Baldwin County Circuit Court, Circuit Criminal Case Number CC-2012-
3 001053, Respondent pled guilty to violating AC section 13A-12-212, unlawful possession of
4 controlled substance, by possessing psilocybin, a controlled substance enumerated in schedules I
5 through V. As a result of Respondent's guilty plea, his felony charge in District Criminal Case
6 Number DC-2012-002217 was dismissed with conditions and he was accepted into the PTIP for
7 a minimum period of three years, with the possibility of deferment to a maximum of five years.
8 Respondent was ordered to pay a PTIP application fee of \$350.00, a fine of \$250.00, several
9 special assessments, and the costs and all fees of court to include court appointed attorney's fees.
10 Respondent was also ordered to accept all the other conditions of the PTIP, a violation of which
11 could lead to modifications of the conditions or revocation of the PTIP agreement.

12 d. On August 1, 2013, Respondent successfully completed his substance
13 abuse treatment. On January 16, 2013, Respondent submitted proof of successful completion of
14 his treatment and paid all fines, fees, and assessments in full. Respondent's oral motion not to
15 prosecute was granted. On February 11, 2013, the District Attorney moved to vacate the guilty
16 plea, declined to further prosecute the case, and recommended that the court dismiss the charge.
17 The court granted Respondent's motion to withdraw his guilty plea and dismissed the case under
18 the PTIP agreement.

19 **SECOND CAUSE FOR DENIAL OF APPLICATION**

20 **(Act If Done By Licentiate –Violation of Pharmacy Laws)**

21 18. Respondent's application for a Pharmacist License is subject to denial under Code
22 sections 475, subdivision (a)(4), and 480, subdivision (a)(3)(A) in that on May 18, 2012, as
23 detailed in paragraph 17, above, he unlawfully possessed psilocybin, which would be a violation
24 of Code section 4060, a misdemeanor, violating a statute of the State of California regulating
25 controlled substances and dangerous drugs, and which would be a ground for discipline for a
26 licensed pharmacist under Code section 4301, subdivision (o).

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1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 **(Act If Done By Licentiate – 2014 Discipline by an Out of State Government Agency)**

3 19. 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 his license to practice
5 pharmacy in Colorado was disciplined by the State of Colorado, Department of Regulatory
6 Agencies, Division of Professions and Occupations, State Board of Pharmacy (Colorado Board),
7 which would be a ground for discipline for a licensed pharmacist under Code section 4301,
8 subdivision (n). The circumstances are as follows:

9 a. On May 19, 2014, the Colorado Board approved and accepted an Agreed
10 Stipulation and issued a Final Agency Order against Respondent’s pharmacist license in Case
11 Number: 2013-3915 entitled, *In the Matter of the Disciplinary Proceedings Regarding the*
12 *License to Practice Pharmacy in the State of Colorado of Yazen Qamoh, R.Ph., License No. PHA*
13 *20120*. Under Colorado Revised Statutes (CRS) section 12-42.5-124, subdivisions (6)(b)³ and
14 (6)(c)⁴, the Final Agency Order constituted a Letter of Admonition. The Colorado Board
15 admonished Respondent and cautioned against future repetition of the same or similar conduct.
16 The Colorado Board ordered Respondent to pay all fees and costs associated with the Final
17 Agency Order. The Colorado Board also ordered Respondent to fully comply with the Final
18 Agency Order, the Pharmacists, Pharmacy Businesses, and Pharmaceuticals Act, all Board rules
19 and regulations, and any other state and federal laws and regulations related to pharmaceuticals
20 and pharmacists in the State of Colorado.

21 b. The facts that led to the discipline are that on November 17, 2013,
22 Respondent performed the initial interpretation and final evaluation of an order for Fiorinal/
23

24 ³ (b) When the board sends a letter of admonition to a licensee or registrant complained against,
25 the board shall include in the letter a statement advising the licensee or registrant that the licensee
26 or registrant has the right to request in writing, within twenty days after receipt of the letter, that
the board initiate formal disciplinary proceedings to adjudicate the propriety of the conduct upon
which the letter of admonition is based.

27 ⁴ (c) If the licensee or registrant timely requests adjudication, the letter of admonition is vacated,
28 and the board shall process the matter by means of formal disciplinary proceedings.

1 Codeine #3, which was dispensed as butalbital/acetaminophen/caffeine/codeine. Respondent
2 admitted and the Colorado Board found true that Respondent's conduct constituted a violation of
3 CRS sections 12-42.5-120(1)⁵, 12-42.5-122(1)⁶, 12-42.5-123(1)⁷ subdivisions (c)(I), (c)(II),
4 (c)(III), and (k), and 12.42.5-126(1)⁸, subdivisions (g) and (h). Respondent's conduct was also in
5 violation of State of Colorado Board of Pharmacy Rules 1.00.11, 2.01.10(c), and 3.00.50,
6 subdivisions (a) and (b).

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9 ⁵ (1) Except as provided in section 18-18-414, C.R.S., and subsection (2) of this section, an order
10 is required prior to dispensing any prescription drug. Orders shall be readily retrievable within the
11 appropriate statute of limitations.

12 ⁶ (1) A pharmacist filling a prescription order for a specific drug by brand or proprietary name
13 may substitute an equivalent drug product if the substituted drug product is the same generic drug
14 type and, in the pharmacist's professional judgment, the substituted drug product is
15 therapeutically equivalent, is interchangeable with the prescribed drug, and is permitted to be
16 moved in interstate commerce. A pharmacist making a substitution shall assume the same
17 responsibility for selecting the dispensed drug product as he or she would incur in filling a
18 prescription for a drug product prescribed by a generic name; except that the pharmacist is
19 charged with notice and knowledge of the federal food and drug administration list of approved
20 drug substances and manufacturers that is published periodically.

21 ⁷ (1) The board may suspend, revoke, refuse to renew, or otherwise discipline any license or
22 registration issued by it, after a hearing held in accordance with the provisions of this section,
23 upon proof that the licensee or registrant:

24 ...

25 (c) Has violated:

26 (I) Any of the provisions of this article, including commission of an act declared unlawful in
27 section 12-42.5-126;

28 (II) The lawful rules of the board; or

(III) Any state or federal law pertaining to drugs;

...

(k) Has failed to meet generally accepted standards of pharmacy practice;

⁸ (1) It is unlawful:

...

(g) To sell, compound, dispense, give, receive, or possess any drug or device unless it was
sold, compounded, dispensed, given, or received in accordance with sections 12-42.5-118 to 12-
42.5-122;

(h) Except as provided in section 12-42.5-122, to dispense a different drug or brand of drug in
place of the drug or brand ordered or prescribed without the oral or written permission of the
practitioner ordering or prescribing the drug;

....

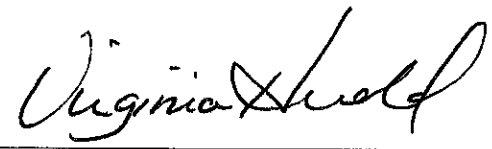
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PRAYER

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:

1. Denying the application of Yazan Qamoh for a Pharmacist License; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 11/14/16



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

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