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

12 In the Matter of the Statement of Issues
Against:

Case No. 6069

13 **ROBERTO PERERA, III**
14 **Pharmacist License Applicant**

FIRST AMENDED
STATEMENT OF ISSUES

15 Respondent.

16 Virginia Herold ("Complainant") alleges:

17 **PARTIES**

18 1. Complainant brings this First Amended Statement of Issues solely in her official
19 capacity as the Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer
20 Affairs.

21 2. On or about October 3, 2016, the Board received an application for a Pharmacist
22 License from Roberto Perera, III ("Respondent"). On or about September 29, 2016, Respondent
23 certified under penalty of perjury to the truthfulness of all statements, answers, and
24 representations in the application. The Board denied the application on February 10, 2017.

25 **JURISDICTION**

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

STATUTORY PROVISIONS

4. Code section 480 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.

(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 that is required to be revealed in the application for the license.

5. 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 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

•

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

1 ...

2 (h) The administering to oneself, of any controlled substance, or the use of any
3 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
4 dangerous or injurious to oneself, to a person holding a license under this chapter, or
5 to any other person or to the public, or to the extent that the use impairs the ability of
6 the person to conduct with safety to the public the practice authorized by the license.

7 ...

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

10 ...

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

18 **DRUGS**

19 6. "Marihuana" (also known as marijuana and cannabis) is a Schedule I controlled
20 substance as designated by United States Code, title 812, section 812(c)(10).

21 **FIRST CAUSE FOR DENIAL OF APPLICATION**

22 (Criminal Conviction)

23 7. Respondent's application is subject to denial under Code sections 480(a)(1), in that
24 Respondent was convicted of a crime that is substantially related to the qualifications, functions,
25 and duties of a licensee. Specifically, on or about May 6, 2008, in the matter entitled *People of*
26 *the State of Illinois v. Roberto Perera*, Case No. 2008-CF-222, in the Circuit Court of the Eighth
27 Judicial Circuit of Illinois, Adams County, Respondent pled guilty to a violation of Chapter 720,
28

1 section 4(c), of the Illinois Compiled Statutes (unlawful possession of cannabis), a misdemeanor.
2 The circumstances of the crime are that on or about March 13, 2008, Respondent's vehicle, which
3 was being driven by "J.K.", was detained by an officer with the Quincy Police Department, State
4 of Illinois. Approximately 26.2 grams of cannabis were found inside the vehicle. Respondent
5 admitted in the course of the investigation that the cannabis was his and that he and J.K. had sold
6 approximately 10 ounces of cannabis since the beginning of the year.

7 **SECOND CAUSE FOR DENIAL OF APPLICATION**

8 (Acts if Done by Licentiate Would Be Grounds for Suspension or Revocation)

9 8. Respondent's application is subject to denial under section 480(a)(3)(A) in that
10 Respondent has done acts that if done by a licentiate would be cause for suspension or revocation
11 of licensure, as follows:

12 a. Respondent was convicted of a crime substantially related to the qualifications,
13 functions, and duties of a licensee, as set forth in paragraph 7, above, in violation of Code Section
14 4301(l).

15 b. Respondent committed an act of corruption, in that Respondent unlawfully possessed
16 and sold cannabis (marijuana), a controlled substance, in the State of Illinois, as set forth in
17 paragraph 7, above, in violation of Code Section 4301(f).

18 c. Respondent violated the statutes of the State of Illinois and the United States
19 regulating controlled substances, in that Respondent unlawfully possessed and sold cannabis
20 (marijuana), a controlled substance, as more fully set forth in paragraph 7, above, in violation of
21 Code Section 4301(j).

22 d. Respondent administered alcoholic beverages to himself to the extent or in a manner
23 to be dangerous or injurious to himself or the public, in violation of Code section 4301(h). The
24 circumstances are that on or about August 3, 2013, Respondent's vehicle was stopped by a
25 sheriff's deputy in Lee County, Florida, for swerving in and out of traffic, twice pulling into the
26 left lane from the center lane while another vehicle was occupying the lane. The deputy could
27 smell a moderate odor of an alcoholic beverage coming from Respondent's breath and face area.
28 The deputy administered field sobriety tests and Respondent did not successfully complete two of

1 the three tests. Respondent was arrested for driving under the influence and refused a breath test.
2 Respondent was later convicted on his plea of nolo contendere to reckless driving and ordered to
3 complete 25 hours of community service and a substance abuse and driving education course.

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 Roberto Perera, III for a Pharmacist License; and,
 2. Taking such other and further action as deemed necessary and proper.

10 DATED: 8/7/17

Virginia Knott

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

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Against:

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(j) The violation of any of the statutes of this state, of 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 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action 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 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

DRUGS

6. "Marihuana" (also known as marijuana and cannabis) is a Schedule I controlled substance as designated by United States Code, title 812, section 812(c)(10).

FIRST CAUSE FOR DENIAL OF APPLICATION

(Criminal Conviction)

7. Respondent's application is subject to denial under Code sections 480(a)(1), in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a licensee. Specifically, on or about May 6, 2008, in the matter entitled *People of the State of Illinois v. Roberto Perera*, Case No. 2008-CF-222, in the Circuit Court of the Eighth Judicial Circuit of Illinois, Adams County, Respondent pled guilty to a violation of Chapter 720, section 4(c), of the Illinois Compiled Statutes (unlawful possession of cannabis), a misdemeanor. The circumstances of the crime are that on or about March 13, 2008, Respondent's vehicle, which was being driven by "J.K.", was detained by an officer with the Quincy Police Department, State of Illinois. Approximately 26.2 grams of cannabis were found inside the vehicle. Respondent admitted in the course of the investigation that the cannabis was his and that he and J.K. had sold approximately 10 ounces of cannabis since the beginning of the year.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Acts if Done by Licentiate Would Be Grounds for Suspension or Revocation)

8. Respondent's application is subject to denial under section 480(a)(3)(A) in that Respondent has done acts that if done by a licentiate would be cause for suspension or revocation of licensure, as follows:

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b. Respondent committed an act of corruption, in that Respondent unlawfully possessed and sold cannabis (marijuana), a controlled substance, in the State of Illinois, as set forth in paragraph 7, above, in violation of Code Section 4301(f).

c. Respondent violated the statutes of the State of Illinois and the United States regulating controlled substances, in that Respondent unlawfully possessed and sold cannabis (marijuana), a controlled substance, as more fully set forth in paragraph 7, above, in violation of Code Section 4301(j).

PRAYER

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DATED:

5/8/17

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

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