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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 **AMAR RAVJI LUNAGARIA**
14 **Pharmacist License Applicant**
15
16 Respondent.

Case No. 6205
STATEMENT OF ISSUES

17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Statement of Issues solely in his official
20 capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer
21 Affairs.
- 22 2. On or about May 23, 2017, the Board received an application for a Pharmacist
23 License from Amar Ravji Lunagaria (Respondent). On or about April 27, 2017, Amar Ravji
24 Lunagaria certified under penalty of perjury to the truthfulness of all statements, answers, and
25 representations in the application. The Board denied the application on June 30, 2017.

26 **JURISDICTION**

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

1 otherwise indicated.

2 4. Section 4300, subdivision (c), of the Code states, in pertinent part:
3 The board may refuse a license to any applicant guilty of unprofessional conduct.

4 **STATUTORY PROVISIONS**

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

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

8 ...

9 (2) Conviction of a crime.

10 ...

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

13 ...

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

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

17 (1) Been convicted of a crime. A conviction within the meaning of this
18 section means a plea or verdict of guilty or a conviction following a plea of nolo
19 contendere. Any action that a board is permitted to take following the
20 establishment of a conviction may be taken when the time for appeal has elapsed, or
21 the judgment of conviction has been affirmed on appeal, or when an order granting
22 probation is made suspending the imposition of sentence, irrespective of a
23 subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the
24 Penal Code.

25 ...

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

28 ...

7. Section 482 of the Code states, in pertinent part:

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. 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, 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:

...

(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 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

1 nolo contendere is deemed to be a conviction within the meaning of this provision.
2 The board may take action when the time for appeal has elapsed, or the judgment of
3 conviction has been affirmed on appeal or when an order granting probation is
4 made suspending the imposition of sentence, irrespective of a subsequent order
5 under Section 1203.4 of the Penal Code allowing the person to withdraw his or her
6 plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty,
7 or dismissing the accusation, information, or indictment.

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10 10. Section 4313 of the Code states:

11 In determining whether to grant an application for licensure or whether to
12 discipline or reinstate a license, the board shall give consideration to evidence of
13 rehabilitation. However, public protection shall take priority over rehabilitation
14 and, where evidence of rehabilitation and public protection are in conflict, public
15 protection shall take precedence.

16 REGULATORY PROVISIONS

17 11. California Code of Regulations, title 16, section 1768, states:

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

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

24 12. California Code of Regulations, title 16, section 1769, states in pertinent part:

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.

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

2 ...

3 13. California Code of Regulations, title 16, section 1770 states:

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

11 **FIRST CAUSE FOR DENIAL OF APPLICATION**

12 **(January 25, 2017 Criminal Conviction for DUI on July 10, 2016)**

13 14. Respondent's application for a Pharmacist License is subject to denial under under
14 Code section 475, subdivisions (a)(2) and (a)(4) and section 480, subdivisions (a)(1) and
15 (a)(3)(A) in that he was convicted of a crime that is substantially related to the qualifications,
16 duties, and functions of a licensed pharmacist, which would also be a ground for discipline for a
17 licensed pharmacist under Code section 4301, subdivision (l). The circumstances are as follows:

18 a. On January 25, 2017, in a criminal proceeding entitled *People of the State of*
19 *California v. Amar R. Lunagaria*, in Sacramento County Superior Court, case number
20 16MI014022, Respondent was convicted on his plea of nolo contendere to violating Vehicle
21 Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of 0.8
22 percent or more, a misdemeanor, and that Respondent was previously convicted of the same
23 offense within the prior ten years, pursuant to Vehicle Code sections 23546, 23548, and 23550.
24 Respondent admitted, and the court found true that Respondent's BAC was 0.15 percent or more,
25 pursuant to Vehicle Code section 23578.

26 b. As a result of the conviction, Respondent was granted informal probation for
27 four years, and sentenced to serve 16 days in the county jail, with pre-custody credit for one day,
28 to be served on the Work Release Program. Respondent was ordered to complete an 18-month
Multiple Offender DUI Program, pay fines and fees, and comply with the DUI probation terms.
The court assessed Respondent's BAC at 0.18 percent.

c. The facts that led to the conviction are that at approximately 2:20 a.m. on July

1 10, 2016, officers with the California Highway Patrol (CHP) observed Respondent enter a
2 freeway and accelerate to a high rate of speed. The CHP officers followed Respondent and paced
3 his speed at 86 miles per hour. Respondent was observed straddling lanes for approximately a
4 quarter of a mile. The officers signaled Respondent to stop. Respondent exited the freeway,
5 failed to stop at a red signal light, and pulled into a restaurant parking lot. When contacting
6 Respondent at his vehicle, the officer immediately detected the odor of alcohol. Respondent's
7 eyes were red and watery, and his speech was slurred. Respondent stumbled out of his vehicle.
8 Respondent submitted to a series of field sobriety tests which he was unable to complete as
9 explained and demonstrated by the CHP officer. Respondent provided two breath samples that
10 were analyzed by the preliminary alcohol screening device with a BAC of .226 and .224 percent,
11 respectively. Respondent was arrested for driving under the influence. Nearly 45 minutes later, while
12 processing at the main jail, Respondent provided two additional breath samples that were analyzed
13 with a BAC of 0.18 percent.

14 **SECOND CAUSE FOR DENIAL OF APPLICATION**

15 **(Act if Done by Licentiate – Dangerous Use of Alcohol)**

16 15. Respondent's application is subject to denial under Code sections 475, subdivision
17 (a)(4) and section 480, subdivision (a)(3)(A) in that he used alcohol to the extent and in a manner
18 that was dangerous and injurious to himself and to the public, which would also be a ground for
19 discipline for a licensed pharmacist under Code section 4301, subdivision (h) in that the extent of
20 Respondent's use of alcohol impaired his ability to conduct with safety to the public the practice
21 authorized by the license. The circumstances are that on or about July 10, 2016, as described in
22 paragraph 14, above, Respondent operated a motor vehicle while impaired by alcohol.

23 **THIRD CAUSE FOR DENIAL OF APPLICATION**

24 **(Act if Done by Licentiate – Multiple Convictions for Alcohol-Related Crimes)**

25 16. Respondent's application is subject to denial under Code sections 475, subdivision
26 (a)(4) and Code section 480, subdivision (a)(3)(A) in that, on or about January 25, 2017, as
27 described in paragraph 14, above, Respondent was convicted of a second crime involving the use
28 or consumption of alcohol, which would also be a ground for discipline for a licensed pharmacist

1 under Code section 4301, subdivision (k), as described in paragraph 14, above, and paragraph 17,
2 below, which are incorporated by reference.

3 **DISCIPLINARY CONSIDERATIONS**

4 17. Respondent's application is subject to denial under Code section 475, subdivisions
5 (a)(2) and (a)(4), and Code section 480, subdivisions (a)(1) and (a)(3)(A), notwithstanding Code
6 section 4313, in that Respondent was previously convicted of driving under the influence. The
7 circumstances are as follows:

8 a. On or about October 23, 2013, in a criminal proceeding entitled *People of the*
9 *State of California v. Amar Lunagaria*, in San Joaquin County Superior Court, case number
10 ST061946A, Respondent was convicted on his plea of nolo contendere to violating Vehicle Code
11 section 23152, subdivision (b), driving with a BAC of .08 percent or more, a misdemeanor. The
12 court dismissed an additional count of driving under the influence of alcohol (Veh. Code, §
13 23152(a)) pursuant to a plea agreement.

14 b. As a result of the conviction, Respondent was granted conditional probation for
15 three years, and sentenced to serve two days in jail, with pre-custody credit for one day.
16 Respondent was ordered to complete a three-month First Offender Program, pay fines and fees,
17 and to comply with DUI probation terms.

18 c. The facts that led to the conviction were that shortly before 2:30 a.m., on
19 August 24, 2013, the Stockton Police Department was dispatched to a report of a single-vehicle
20 collision. Upon making contact with Respondent, officers observed the smell of alcohol on his
21 person, and his eyes were red and watery. Respondent told the officers that he lost control while
22 making a turn and ran off the road. The officers observed a stop sign, a street light pole, and a
23 fire hydrant that were all sheared off at their bases, and damage to a brick planter and fence.
24 Respondent's vehicle had severe paint, body, and fender damage. Respondent admitted
25 consuming alcohol prior to driving. Respondent provided one breath sample that was analyzed
26 with a BAC of .15 percent. Respondent was arrested for driving under the influence.

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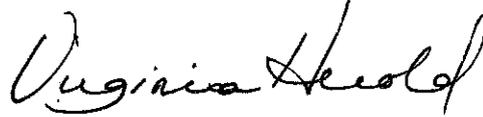
PRAYER

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 Amar Ravji Lunagaria for a Pharmacist License;
2. Taking such other and further action as deemed necessary and proper.

DATED: _____

8/31/17



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

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