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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 Against:
12 **JAMES E. CLAUSIUS,**
13 **a.k.a. JAMES EDWARD CLAUSIUS**
14 **1401 Liggett Avenue**
Reading, Pennsylvania 19607
15 Respondent.

Case No. 3684

STATEMENT OF ISSUES

16 Complainant alleges:

17 **PARTIES**

18 1. Virginia Herold ("Complainant") brings this 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 April 7, 2009, the Board received an application for a pharmacist license
22 from James E. Clausius, also known as James Edward Clausius ("Respondent"). On or about
23 March 27, 2009, Respondent certified under penalty of perjury to the truthfulness of all
24 statements, answers, and representations in the application. The Board denied the application on
25 October 27, 2009.

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1 3. Business and Professions Code ("Code") section 4300 states, in pertinent part:

2 (a) Every license issued may be suspended or revoked.

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4 (c) The board may refuse a license to any applicant guilty of
5 unprofessional conduct. The board may, in its sole discretion, issue a probationary
6 license to any applicant for a license who is guilty of unprofessional conduct and who
7 has met all other requirements for licensure. The board may issue the license subject
8 to any terms or conditions not contrary to public policy, including, but not limited to,
9 the following:

10 (1) Medical or psychiatric evaluation.

11 (2) Continuing medical or psychiatric treatment.

12 (3) Restriction of type or circumstances of practice.

13 (4) Continuing participation in a board-approved rehabilitation program.

14 (5) Abstention from the use of alcohol or drugs.

15 (6) Random fluid testing for alcohol or drugs.

16 (7) Compliance with laws and regulations governing the practice of
17 pharmacy.

18 (d) The board may initiate disciplinary proceedings to revoke or suspend
19 any probationary certificate of licensure for any violation of the terms and conditions
20 of probation. Upon satisfactory completion of probation, the board shall convert the
21 probationary certificate to a regular certificate, free of conditions . . .

22 4. Code section 4301 states, in pertinent part:

23 The board shall take action against any holder of a license who is guilty
24 of unprofessional conduct or whose license has been procured by fraud or
25 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
26 not limited to, any of the following:

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

5. 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:

(2) Done any act involving dishonesty, fraud, or deceit with the intent to
substantially benefit himself or herself or another, or substantially injure another.

1 (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.

2 (B) The board may deny a license pursuant to this subdivision only if the
3 crime or act is substantially related to the qualifications, functions, or duties of the
business or profession for which application is made.

4 **FIRST CAUSE FOR DENIAL**

5 **(Disciplinary Actions by the Colorado and Pennsylvania State Boards of Pharmacy)**

6 6. Respondent's application is subject to denial pursuant to Code sections 4300,
7 subdivision (c), and 480, subdivision (a)(3)(A), in that he was disciplined by the Colorado State
8 Board of Pharmacy (hereinafter "Colorado Board") and the Pennsylvania State Board of
9 Pharmacy (hereinafter "Pennsylvania Board"), as set forth below. Respondent's disciplinary
10 actions by the Colorado and Pennsylvania Boards constitute unprofessional conduct and would
11 subject Respondent to disciplinary action pursuant to Code section 4301, subdivision (n), were he
12 a licentiate of the California Board of Pharmacy.

13 **Disciplinary Actions by the Colorado Board:**

14 a. On or about November 22, 1994, pursuant to the Stipulation and Final Agency Order
15 in the disciplinary action titled *In the Matter of the Disciplinary Proceeding Regarding the*
16 *License to Practice Pharmacy in the State of Colorado of James Edward Clausius, License No.*
17 *11692, Case No. RG PH DAKBB*, Respondent voluntarily relinquished his license to practice as a
18 pharmacist in Colorado and his license was thereupon revoked. A true and correct copy of the
19 Stipulation and Final Agency Order is attached hereto as exhibit A and incorporated herein.
20 Respondent admitted, among other things, as follows:

21 1. From approximately September 1992 to March 1993, while employed as a
22 pharmacist at Safeway Pharmacy in Thornton, Colorado, Respondent diverted the controlled
23 substances Halcion and Xanax from the pharmacy for his own use. Respondent was arrested by
24 the Thornton Police and was charged in Adams County District Court with the illegal use and
25 theft of controlled substances.¹

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27 ¹ Respondent stated on his application submitted to the California Board of Pharmacy that
28 he was convicted of a misdemeanor.

1 2. In approximately July 1993, Respondent was arrested and charged with driving
2 under the influence, and was determined to have a blood alcohol level of 0.15. Respondent
3 subsequently entered a plea of guilty to driving while ability impaired.²

4 3. On May 25, 1994, Respondent underwent a Board-ordered psychiatric
5 evaluation by Michael N. Schwartz, M.D. and was diagnosed with possible alcohol abuse,
6 possible benzodiazepine abuse, and personality disorder, not otherwise specified, with antisocial
7 traits.

8 4. Respondent refused to enter and complete a Board-ordered rehabilitation
9 program.

10 5. On September 1, 1994, Respondent was summarily suspended by the Colorado
11 Board in the interest of the public safety.

12 b. On or about June 25, 1997, pursuant to the Stipulation and Final Agency Order
13 (hereinafter "1997 SFAO") in the disciplinary proceeding titled *In the Matter of the Application*
14 *for Licensure as an Intern of James E. Clausius*, Case No. RG PH DALRI, the Colorado Board
15 ordered that Respondent shall be issued a restricted and probationary license to practice as an
16 intern in Colorado conditioned and contingent upon Respondent's entry and on-going
17 participation in a Board-approved Peer Health Assistance Diversion Program. A true and correct
18 copy of the Stipulation and Final Agency Order is attached hereto as exhibit B and incorporated
19 herein.

20 c. On or about September 9, 1998, pursuant to the Initial Decision of the Administrative
21 Law Judge ("ALJ") adopted by the Colorado Board via the Final Agency Order in the disciplinary
22 proceeding titled *In the Matter of Disciplinary Action Concerning the License to Practice*
23 *Pharmacy in the State of Colorado of James E. Clausius, Intern License No. 97170*, Case No. PH
24 97-07, the Colorado Board revoked Respondent's Intern License No. 97170. A true and correct
25 copy of the Final Agency Order is attached hereto as exhibit C and incorporated herein. The ALJ

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27 ² Respondent admitted on his application submitted to the California Board of Pharmacy
28 that he had misdemeanor convictions in Colorado for driving while impaired in 1992 and driving
under the influence in June 1993.

1 found that Respondent failed to meet his diversion program obligations and comply with the 1997
2 SFAO, and violated C.R.S. Section 12-22-605(3), C.R.S. Section 12-22-125(1)(c), by virtue of
3 his violations of Board Rules 18.01.12, 18.02.11 and 18.02.19, and Rules 18.02.30 and paragraph
4 9.c. of the 1997 SFAO.

5 d. On or about November 23, 2001, pursuant to the Stipulation and Final Agency Order
6 in the disciplinary proceeding titled *In the Matter of the Application for a Restricted License to*
7 *Practice as a Pharmacy Intern in the State of Colorado of James E. Clausius*, Case No. RG PH
8 DLNJU, the Colorado Board ordered that Respondent shall be issued a restricted, probationary
9 license to practice as a pharmacy intern. A true and correct copy of the Stipulation and Final
10 Agency Order is attached hereto as exhibit D and incorporated herein.

11 e. On or about February 7, 2003, pursuant to the Stipulation and Final Agency Order in
12 the disciplinary proceeding titled *In the Matter Regarding the License to Practice as a Pharmacy*
13 *Intern in the State of Colorado of James E. Clausius, Intern License No. 2002023*, Case No. RG
14 PH DLOAK, Respondent voluntarily relinquished his license to practice as a pharmacy intern in
15 Colorado, and his license was thereupon canceled. A true and correct copy of the Stipulation and
16 Final Agency Order is attached hereto as exhibit E and incorporated herein. Respondent admitted
17 that he had been non-compliant with his diversion contract and with the reporting terms of his
18 2001 Stipulation and Final Agency Order.

19 **Disciplinary Actions by the Pennsylvania Board:**

20 f. On or about August 19, 1997, pursuant to the Adjudication and Order in the
21 disciplinary proceeding titled *In the Matter of the License to Practice Pharmacy of James Edward*
22 *Clausius, R.P.H., License No. RP-027991-L*, Case No. 0176-54-97, the Pennsylvania Board
23 revoked Respondent's license to practice pharmacy in Pennsylvania (hereinafter "Pennsylvania
24 license") based on the Colorado Board's disciplinary action of November 22, 1994, set forth in
25 subparagraph (a) above, and Respondent's plea of guilty to a misdemeanor in Colorado
26 (Respondent's conviction for illegal use and theft of controlled substances). A true and correct
27 copy of the Stipulation and Final Agency Order is attached hereto as exhibit F and incorporated
28 herein.

1 g. On or about August 22, 2003, pursuant to the Adjudication and Order in the
2 disciplinary proceeding titled *In the Matter of the Petition for Reinstatement of the License to*
3 *Practice Pharmacy of James E. Clausius, R.P.H.*, Case No.1118-54-02, the Pennsylvania Board
4 granted Respondent's request to reinstate his Pennsylvania license on the condition that
5 Respondent pass the NAPLEX and MPJE exams and submit proof of completion of at least 90
6 hours of ACPE-approved continuing education. The Board further ordered that upon completion
7 of these requirements, Respondent's license shall be reinstated to probationary status for a period
8 of 3 years subject to certain terms and conditions. A true and correct copy of the Adjudication
9 and Order is attached hereto as exhibit G and incorporated herein.

10 h. On or about September 20, 2006, pursuant to the Consent Agreement and Order in the
11 disciplinary proceeding titled *Commonwealth of Pennsylvania v. James Edward Clausius, R.Ph.*,
12 Case No. 1560-54-06, the Pennsylvania Board indefinitely suspended Respondent's Pennsylvania
13 license for no less than 3 years. The suspension was immediately stayed and Respondent was
14 placed on probation for 3 years retroactive to August 6, 2005, on certain terms and conditions. A
15 true and correct copy of the Consent Agreement and Order is attached hereto as exhibit H and
16 incorporated herein. Respondent admitted that he tested positive for alcohol on May 5, 2005, and
17 August 5, 2005, and used alcohol on both occasions.

18 **SECOND CAUSE FOR DENIAL**

19 **(Dishonesty, Fraud, or Deceit)**

20 7. Respondent's application is subject to denial pursuant to Code sections 4300,
21 subdivision (c), and 480, subdivision (a)(2), in that he committed acts involving dishonesty,
22 fraud, or deceit with the intent to substantially benefit himself or another, or substantially injure
23 another, as set forth in subparagraph 6(a)(1) above.

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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 James E. Clausius, also known as James Edward Clausius, for a pharmacist license;
2. Taking such other and further action as deemed necessary and proper.

DATED: _____

7/15/10



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