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

11 In the Matter of the Statement of Issues
12 Against:

Case No. 3842

13 **SUSAN KATHERINE DEMBER**
14 **321 EAST AMERIGE AVENUE**
FULLERTON, CA 92832

STATEMENT OF ISSUES

15 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about June 22, 2009, the Board of Pharmacy, Department of Consumer Affairs
23 received an application for registration as a Pharmacy Technician from Susan Katherine Dember
24 (Respondent). On or about June 18, 2009, Susan Katherine Dember certified under penalty of
25 perjury to the truthfulness of all statements, answers, and representations in the application. The
26 Board denied the application on May 19, 2010.

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JURISDICTION

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2 3. This Statement of Issues is brought before the Board of Pharmacy (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. 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 licenses on the grounds of:

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9 (2) Conviction of a crime.

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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.

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14 5. Section 4300 of the Code states, in pertinent part:

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

22 (1) Medical or psychiatric evaluation.

23 (2) Continuing medical or psychiatric treatment.

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

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

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

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

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

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STATUTORY PROVISIONS

6. 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 (1) Been convicted of a crime. A conviction within the meaning of this
2 section means a plea or verdict of guilty or a conviction following a plea of nolo
3 contendere. Any action which a board is permitted to take following the
4 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 of the Penal Code.

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

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

9

10 7. Section 493 of the Code states:

11 Notwithstanding any other provision of law, in a proceeding conducted by a
12 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
13 person who holds a license, upon the ground that the applicant or the licensee has
14 been convicted of a crime substantially related to the qualifications, functions, and
15 duties of the licensee in question, the record of conviction of the crime shall be
16 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
17 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.

18 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
'registration.'

19 8. Section 4301 of the Code states:

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

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24 (h) The administering to oneself, of any controlled substance, or the use of
25 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
26 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
27 ability of the person to conduct with safety to the public the practice authorized by
the license.

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1 (k) The conviction of more than one misdemeanor or any felony involving
2 the use, consumption, or self-administration of any dangerous drug or alcoholic
3 beverage, or any combination of those substances.

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

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24 REGULATORY PROVISIONS

25 9. California Code of Regulations, title 16, section 1770, states:

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

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

(a) When considering the denial of a facility or personal license under
Section 480 of the Business and Professions Code, the board, in evaluating the
rehabilitation of the applicant and his present eligibility for licensing or
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.

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

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

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

5 **FIRST CAUSE FOR DENIAL OF APPLICATION**

6 **(May 9, 2000 Criminal Conviction for DUI on March 17, 2000)**

7 11. Respondent's application is subject to denial under section 480, subdivisions (a) (1)
8 and (a) (3), sections 4300, subdivision (c) and 4301 subdivision (l) of the Code, in that
9 Respondent was convicted of a crime that is substantially related to the qualifications, functions,
10 and duties of a pharmacy technician. The circumstances are as follows.

11 12. On or about May 9, 2000, in a criminal proceeding entitled *People of the State of*
12 *California v. Susan Katherine Dember*, in Orange County Superior Court, case number
13 BR00NM06732, Respondent was convicted on her plea of guilty of violating Vehicle Code
14 section 23152, subdivision (a), driving a vehicle while under the influence of alcohol and Vehicle
15 Code section 23152, subdivision (b), driving a vehicle while having a blood alcohol content in
16 excess of .08 percent, both misdemeanors.

17 13. As a result of the conviction, on or about May 9, 2000, Respondent was sentenced to
18 three years summary probation, ordered to complete a three month First Offender Alcohol
19 Program and pay fees and fines.

20 14. The facts that led to the conviction were that on or about March 17, 2000, Respondent
21 unlawfully drove a motor vehicle while having a blood alcohol content by weight in excess of .08
22 percent, to wit, .18 percent.

23 **SECOND CAUSE FOR DENIAL OF APPLICATION**

24 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

25 15. Respondent's application is subject to denial under section 480, subdivision (a) (3),
26 sections 4300, subdivision (c) and 4301, subdivision (h) of the Code in that on or about March 17,
27 2000, as described in the First Cause for Denial of Application, above, Respondent used alcoholic
28 beverages to an extent or in a manner that was dangerous or injurious to herself and to others in

1 that she operated a motor vehicle while impaired by alcohol. Such unprofessional conduct posed
2 a significant threat to public safety.

3 **THIRD CAUSE FOR DENIAL OF APPLICATION**

4 **(Unprofessional Conduct - Conviction of Alcohol-Related Criminal Offense)**

5 16. Respondent's application is subject to denial under section 480, subdivision (a) (3),
6 sections 4300, subdivision (c) and 4301, subdivision (k) of the Code in that on or about March 17,
7 2000, as described in the First Cause for Denial of Application, above, Respondent was convicted
8 of a criminal offense involving the consumption and/or self-administration of alcohol, which
9 constitutes unprofessional conduct.

10 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

11 **(August 7, 2008 Criminal Conviction for DUI on November 4, 2007)**

12 17. Respondent's application is subject to denial under section 480, subdivisions (a) (1)
13 and (a) (3), sections 4300, subdivision (c) and 4301 subdivision (l) of the Code, in that
14 Respondent was convicted of a crime that is substantially related to the qualifications, functions,
15 and duties of a pharmacy technician. The circumstances are as follows.

16 18. On or about August 7, 2008, in a criminal proceeding entitled *People of the State of*
17 *California v. Susan Katherine Dember*, in Orange County Superior Court, case number
18 08NM00423, Respondent was convicted on her plea of guilty of violating Vehicle Code section
19 23152, subdivision (a), driving a vehicle while under the influence of alcohol and Vehicle Code
20 section 23152, subdivision (b), driving a vehicle while having a blood alcohol content in excess
21 of .08 percent, both misdemeanors.

22 19. As a result of the conviction, on or about August 7, 2008, Respondent was sentenced
23 to three years summary probation, ordered to complete an eighteen month Multiple Offender
24 Alcohol Program, to complete a MADD Victim's Impact panel and pay fees and fines.

25 20. The facts that led to the conviction were that on or about November 4, 2007, a patrol
26 officer with the Brea Police Department observed a blue Infiniti G-35 weaving in lanes on
27 westbound Lambert Avenue. The officer pulled the vehicle over and found Respondent as the
28 driver and sole occupant of the vehicle. The officer noted that upon contact with Respondent she

1 had watery and bloodshot eyes, her speech was slurred, mumbled and soft, and she had a strong
2 odor of an alcoholic beverage on her breath. Respondent was unable to pass and complete the
3 field sobriety tests that were conducted. Based on his observations, the officer arrested
4 Respondent for driving under the influence of alcohol. Respondent's blood alcohol content was
5 tested and found to be in excess of .08 percent, to wit, .22 percent.

6 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

7 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

8 21. Respondent's application is subject to denial under section 480, subdivision (a) (3),
9 sections 4300, subdivision (c) and 4301, subdivision (h) of the Code in that on or about
10 November 4, 2007, as described in the Fourth Cause for Denial of Application, above,
11 Respondent used alcoholic beverages to an extent or in a manner that was potentially dangerous
12 or injurious to herself and to others in that she operated a motor vehicle while impaired by
13 alcohol. Such unprofessional conduct posed a significant threat to public safety.

14 **SIXTH CAUSE FOR DENIAL OF APPLICATION**

15 **(Unprofessional Conduct - Conviction of Alcohol-Related Criminal Offense)**

16 22. Respondent's application is subject to denial under section 480, subdivision (a) (3),
17 sections 4300, subdivision (c) and 4301, subdivision (k) of the Code in that on or about
18 November 4, 2007, as described in the Fourth Cause for Denial of Application, above,
19 Respondent was convicted of a criminal offense involving the consumption and/or self-
20 administration of alcohol, which constitutes unprofessional conduct.

21 **PRAYER**

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

24 1. Denying the application of Susan Katherine Dember for registration as a Pharmacy
25 Technician;

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2. Taking such other and further action as deemed necessary and proper.

DATED: 4/2/10

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

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