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8	BEFORE THE BOARD OF PHARMACY	
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
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11	In the Matter of the Statement of Issues Against:	Case No. 4093
12	CALVIN THOMAS TYREE, JR. 4674 Tanglewood Trail	•
13	Boulder, CO 80301	STATEMENT OF ISSUES
14	Applicant for Registered Pharmacist License	
15	Respondent.	
16	Complement alleges	
.	Complainant alleges:	
17	PARTIES (ST. 11 CO. 11	
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, Department of Consumer Affairs.	
20	2. On or about October 19, 2010, the Board of Pharmacy, Department of Consumer	
21	Affairs received Application for Pharmacist Licensure and Examination from Calvin Thomas	
22	Tyree, Jr. (Respondent). On or about October 3, 2010, Respondent certified under penalty of	
23	perjury as to the truthfulness of all statements, answers, and representations in the application.	
24	The Board denied the application on or about April 29, 2011.	
25	<u>JURISDICTION</u>	
26	3. This Statement of Issues is brought before the Board of Pharmacy (Board),	
27	Department of Consumer Affairs, under the authority of the following laws. All section	
28	references are to the Business and Professions Code (Code) unless otherwise indicated.	

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has one of the following:

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- "(a) A board may deny a license regulated by this code on the grounds that the applicant
- "(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or
- "(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.

"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."

Section 4300, subdivision (c), of the Code states:

Section 480 of the Code states, in pertinent part:

- "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. . . . "
- 6. Section 4301 of the Code provides, in pertinent part, that "unprofessional conduct" is defined to include, but not be 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.
- (i) 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.
- (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.
- (o) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of, or conspiring to violate, any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

- 7. Section 4067 of the Code, in pertinent part, prohibits dispensing or furnishing of dangerous drugs without a prescription issued pursuant to a good faith prior examination.
- 8. Health and Safety Code section 11153, in pertinent part, places a corresponding responsibility on the dispensing pharmacist to ensure that controlled substances are dispensed only pursuant to prescriptions issued for legitimate medical purposes by a licensed prescriber acting in the usual course of his or her professional practice.
  - 9. California Code of Regulations, title 16, section 1770, states:

"For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business 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."

## CONTROLLED SUBSTANCES / DANGEROUS DRUGS

- 10. Section 4021 of the Code states:
- "'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."
  - 11. Section 4022 of the Code states, in pertinent part:
- "Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, and includes the following:
- "(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only,' or words of similar import.
- "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."
- 12. **Ambien** is a brand name for **zolpidem tartrate**, a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(32) and a dangerous drug as designated by Business and Professions Code section 4022. It is a depressant drug/sleep aid.

#### FACTUAL BACKGROUND

- 13. For an unknown total time period including but not necessarily limited to 2005, Respondent owned and operated one or more pharmacies in the State of Colorado, while being licensed in Colorado as a registered pharmacist (Colorado license number PHA-16164).
- 14. For an unknown total time period including but not necessarily limited to 2005, Respondent dispensed dangerous drugs and/or controlled substances to patients in the absence of valid prescriptions, pursuant to prescriptions facilitated by and/or transmitted via the internet. During this time period Respondent dispensed an unknown number of prescriptions to patients in California in the absence of valid prescriptions, including but not necessarily limited to a prescription for **Ambien** dispensed to a California patient on or about September 1, 2005.
- 15. Between in or about 2007 and in or about 2011, Respondent's license(s) to practice<sup>1</sup> were subjected to discipline by the State Board of Pharmacy for the State of Colorado (Colorado Board). The orders entered against Respondent's license(s) by the Colorado Board include:
  - A Stipulation and Final Agency Order effective January 26, 2007 resolving Case No. 2006-3367, pursuant to which Respondent admitted to having misrepresented his criminal history when submitting his application for licensure as a pharmacist intern in 1999, and when submitting his application for licensure as a pharmacist in 2001, and in disposition of which Respondent was issued a Letter of Admonition;
  - A Final Agency Order effective September 23, 2008, in Case No. PH 2007-0011, in which the Colorado Board found that Respondent had failed to adequately or promptly inform the Colorado Board, or cause the Colorado Board to be informed, of criminal charges that had been filed against him in California arising out of the facts described in paragraphs 13 and 14 (charges that were subsequently dismissed), and in which the Colorado Board entered an order placing Respondent's license to practice pharmacy in Colorado on probation for a period of three (3) years, on specified terms and conditions;

<sup>&</sup>lt;sup>1</sup> Respondent was also previously licensed as a Pharmacist Intern (License No. IN-99070) by the State of Colorado. That license expired and/or was canceled in 2001.

• A Stipulation and Final Agency Order effective May 31, 2011 resolving Case Nos. 2009-1786, 2009-1787, 2010-1141, and 2011-0920, in which the Colorado Board had alleged that Respondent (a) failed to notify the Colorado Board that he was named as a civil defendant in a 2007 lawsuit arising out of his practice of pharmacy, (b) improperly transferred controlled substances to another pharmacy, (c) failed to promptly notify the DEA of the closure of his pharmacy location, (d) failed to submit proof of completion of an ethics course required to be completed as part of his probation, and (e) edited and falsified a malpractice reporting form from his malpractice insurance carrier, wherein Respondent denied the allegations and offered his own versions of these events, but in the interest of compromise agreed to relinquish (surrender) his license(s), terminating his ongoing probation obligation(s) and ceasing practice in the State of Colorado.

#### FIRST CAUSE FOR DENIAL OF APPLICATION

(Dishonesty and/or Corruption)

16. Respondent's application is subject to denial under the following section(s) of the Code: 480(a)(2); 480(a)(3) by reference to 4301(f); and/or 4300(c) by reference to 4301(f), in that, as described in paragraphs 13 and 14 above, Respondent engaged in dishonest and/or corrupt conduct by dispensing prescriptions for one or more dangerous drugs or controlled substances in the absence of a valid prescription and/or without exercising his corresponding responsibility.

# SECOND CAUSE FOR DENIAL OF APPLICATION

(Dispensing Without Valid Prescription)

17. Respondent's application is subject to denial under the following section(s) of the Code: 480(a)(3) by reference to 4301(j), (o), 4067, and/or Health and Safety Code section 11153; and/or 4300(c) by reference to 4301(j), (o), 4067, and/or Health and Safety Code section 11153, in that, as described in paragraphs 13 and 14 above, Respondent dispensed prescriptions for one or more dangerous drugs or controlled substances in the absence of a valid prescription and/or without exercising his corresponding responsibility.

### THIRD CAUSE FOR DENIAL OF APPLICATION 1 (License Discipline by Another State) 2 18. Respondent's application is subject to denial under the following section(s) of the 3 Code: 480(a)(3) by reference to 4301(n) and/or 4300(c) by reference to 4301(n), in that, as 4 described in paragraph 15 above, between in or about 2007 and in or about 2011 Respondent's 5 license(s) to practice pharmacy in the State of Colorado were subjected to discipline.. 6 7 FOURTH CAUSE FOR DENIAL OF APPLICATION 8 9 (Unprofessional Conduct) 19. Respondent's application is subject to denial under the following section(s) of the 10 Code: 480(a)(3) by reference to 4301; and/or 4300(c) by reference to 4301, in that, as described 11 12 in paragraphs 13 to 18 above, Respondent engaged in unprofessional conduct. 13 14 PRAYER WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, 15 and that following the hearing, the Board of Pharmacy issue a decision: 16 Denying the application of Calvin Thomas Tyree, Jr. for licensure and examination as 17 1. a Registered Pharmacist; 18 2. Taking such other and further action as is deemed necessary and proper. 19 20 DATED: 21 /IRGIN Executive Officer 22 Board of Pharmacy Department of Consumer Affairs 23 State of California Complainant 24 25 SF2011202119 20517423.doc 26 27 28