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

11 In the Matter of the Statement of Issues Against:

Case No. 4096

12 **CARYN LYNN TROTTA-GUNDERSEN**
13 **a.k.a. CARYN TROTTA**
15201 W. Becker Lane
14 Surprise, AZ 85379-5341

STATEMENT OF ISSUES

15 Applicant for Pharmacist License

16 Respondent.

17
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 ("Board"), Department of Consumer
22 Affairs.

23 2. On or about September 21, 2010, the Board received an application for a Pharmacist
24 license from Caryn Lynn Trotta-Gundersen also known as Caryn Trotta ("Respondent"). On or
25 about August 8, 2010, Respondent certified under penalty of perjury to the truthfulness of all
26 statements, answers, and representations in the application. The Board denied the application on
27 February 1, 2011.

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1 **JURISDICTION**

2 3. Section 4300 of the Code provides, in pertinent part, the Board may refuse a license
3 to any applicant guilty of unprofessional conduct.

4 **STATUTORY PROVISIONS**

5 4. Section 480 of the Code states, in pertinent:

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

8 (1) Been convicted of a crime. A conviction within the meaning of this
9 section means a plea or verdict of guilty or a conviction following a plea of nolo
10 contendere. Any action that a board is permitted to take following the
11 establishment of a conviction may be taken when the time for appeal has elapsed,
12 or the judgment of conviction has been affirmed on appeal, or when an order
13 granting probation is made suspending the imposition of sentence, irrespective of a
14 subsequent order under the provisions of Section 1203.4 of the Penal Code.

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

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

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

23 5. Section 4022 of the Code states:

24 "Dangerous drug" or "dangerous device" means any drug or device unsafe
25 for self-use in humans or animals, and includes the following:

26 (a) Any drug that bears the legend: "Caution: federal law prohibits
27 dispensing without prescription," "Rx only," or words of similar import.

28 (b) Any device that bears the statement: "Caution: federal law restricts this
device to sale by or on the order of a _____," "Rx only," or words of similar
import, the blank to be filled in with the designation of the practitioner licensed to
use or order use of the device.

(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.

6. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to
a person upon the prescription of a physician, dentist, podiatrist, optometrist,
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant

1 pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or
2 a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause
3 (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.
4 This section shall not apply to the possession of any controlled substance by a
5 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
6 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
7 practitioner, or physician assistant, when in stock in containers correctly labeled
8 with the name and address of the supplier or producer.

9 Nothing in this section authorizes a certified nurse-midwife, a nurse
10 practitioner, a physician assistant, or a naturopathic doctor, to order his or her
11 own stock of dangerous drugs and devices.

12 7. Section 4301 of the Code states, in pertinent part:

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

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

20 (i) Except as otherwise authorized by law, knowingly selling, furnishing,
21 giving away, or administering, or offering to sell, furnish, give away, or
22 administer, any controlled substance to an addict.

23 (l) The conviction of a crime substantially related to the qualifications,
24 functions, and duties of a licensee under this chapter. The record of conviction of
25 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the
26 United States Code regulating controlled substances or of a violation of the
27 statutes of this state regulating controlled substances or dangerous drugs shall be
28 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.

(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.

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1 **DRUG**

2 8. **Hydrocodone** is a Schedule II controlled substance as designated by Health and
3 Safety Code section 11055, subdivision (b)(1)(I).

4 9. **Vicodin**, a brand of Hydrocodone, is a compound consisting of 5 mg Hydrocodone
5 Bitartrate, also known as Dihydrocodeinone, and 500 mg Acetaminophen per tablet and is a
6 Schedule III controlled substance as designated by Health and Safety Code section 11056,
7 subdivision (e)(4).

8 **FIRST CAUSE FOR DENIAL OF APPLICATION**

9 (Out of State Discipline)

10 10. Respondent's application is subject to denial under Code sections 4300 and 4301,
11 subdivision (n), in that on or about August 11, 2004, Respondent entered into a Consent
12 Agreement with the Arizona State Board of Pharmacy ("Arizona Board") which suspended her
13 Pharmacist Intern License No. 5768, for from six months to not more than two years from the
14 date of her voluntary surrender of license effective November 21, 2003, followed by probation for
15 a period of five years, and specific terms and conditions. (A true copy of the Consent Agreement
16 is attached hereto, marked Exhibit A, and incorporated herein by this reference.) The underlying
17 circumstances leading to the Arizona Board's action against Respondent are:

18 a. On or about October 9, 2003, Respondent was charged with the illegal sale or
19 transportation of narcotic drugs, a Class 2 felony in Arizona, for her illegal activity occurring
20 between the dates of June 25, 2003, and July 28, 2003.

21 b. On or about November 21, 2003, Respondent voluntarily surrendered Intern
22 License No. 5768 to the Arizona Board and agreed not to accept employment as a Pharmacy
23 Intern or Technician, and not to enter the dispensing area of any pharmacy.

24 c. On or about April 29, 2004, the Maricopa County Superior Court placed
25 Respondent on probation, effective April 21, 2004, for one year for narcotic drug-possession, a
26 Class 6 Felony under A.R.S. §13-3408(A)(1) and fined Respondent \$2,166.00.

27 d. The Arizona Board issued conclusions of law finding Respondent had violated
28 A.R.S. §§32-1927(A)(2) and (A)(5) in that Respondent's pharmacy intern license was subject to

1 revocation or suspension or probation for (i) conviction of a felony and (ii) addiction to the use of
2 alcohol or other drugs to such a degree as to render the licensee unfit in the opinion of the
3 Arizona Board to practice the profession of pharmacy.

4 **SECOND CAUSE FOR DENIAL OF APPLICATION**

5 (Criminal Conviction)

6 11. Respondent's application is subject to denial under Code section 480, subdivision
7 (a)(1), in that on or about April 29, 2004, in the case titled *People v. Caryn Lynn Trotta-*
8 *Gundersen*, Maricopa County Superior Court, State of Arizona, Case No. AZ16696404 ,
9 Respondent was convicted on her plea of guilty of violating Arizona 's statute prohibiting
10 solicitation of narcotic drug, possession, or use, a Class 6 Felony under A.R.S. §13-3408(A)(1).
11 Said crime is substantially related to the qualifications, duties and functions of a licensed
12 pharmacist. Respondent was also fined \$2,166.00 and was sentenced to probation for one year.

13 a. The circumstances are as follows: On or about July 28, 2003, Respondent was
14 arrested by the Surprise Police Department, Surprise, Arizona, for violating A.R.S. 13-3406A.7
15 [transferring prescription only drugs, a Class 6 Felony]. At the time, Respondent was employed
16 by Walgreens, 2222 W. Northern Avenue, #A101, Chandler, Arizona, as a pharmacist assistant
17 and was attending school to be a pharmacist. A pharmacist complained to the Walgreens Loss
18 Prevention Supervisor that on several occasions, he/she would fill a customer's prescription for
19 Hydrocodone and then it would come up missing. The Loss Prevention Supervisor investigated
20 the complaint and Walgreens' video surveillance tape shows Respondent transferring prescription
21 drugs to a then-unknown person. He also collected five prescription tags from Walgreens in
22 which the customers' prescriptions became missing. When confronted, Respondent admitted to
23 the Loss Prevention Supervisor that she had filled patient prescriptions for Hydrocodone and then
24 given them to her sister-in-law M.G. instead of the patients. Walgreens terminated Respondent's
25 employment due to her theft. The value of the unlawfully transferred Hydrocodone was \$229.74,
26 according to Walgreens. Respondent failed to cooperate with the law enforcement officer in that
27 she refused to provide the telephone number and address for M.G. Respondent was charged with
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1 three counts of violating A.R.S. 13-3406A.7, transferring prescription-only drugs, a Class 6
2 Felony.

3 b. On or about February 1, 2005, the Maricopa County Superior Court discharged
4 Respondent's probation, re-designated Respondent's conviction to a misdemeanor, and suspended
5 the sentence.

6 **THIRD CAUSE FOR DENIAL OF APPLICATION**

7 (Acts of Deceit, Dishonesty)

8 12. Respondent's application is subject to denial under Code sections 4300 and 480,
9 subdivision (a)(2), on the grounds of unprofessional conduct in that Respondent committed acts
10 of dishonesty, fraud, or deceit with the intent to substantially benefit herself or another, or
11 substantially injure another. The underlying circumstances are set forth in paragraph 11.a, above,
12 incorporated herein by this reference.

13 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

14 (Acts Warranting Discipline if Done by a Licensee)

15 13. Respondent's application is subject to denial under Code sections 4300 and 480,
16 subdivision (3)(A), on the grounds of unprofessional conduct in that Respondent committed act
17 that if done by a licentiate, would be grounds for discipline under Code sections 490, 4301,
18 subdivision (f), (i), (l), and (n). The underlying circumstances are set forth in paragraphs 10, 11,
19 and 12, above, incorporated herein by this reference.

20 **PRAYER**

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

23 1. Denying the application of Caryn Lynn Trotta-Gundersen also known as Caryn Trotta
24 for a Pharmacist license; and

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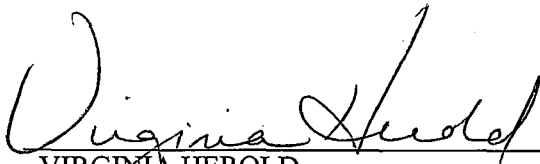
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2. Taking such other and further action as deemed necessary and proper.

DATED: 3/24/12



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

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