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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 Against:

Case No. 5088

12 **DANEKA DENISE SMITH**

13 **Applicant for a Pharmacy Technician Registration**

STATEMENT OF ISSUES

14 Respondent.

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17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about May 22, 2013, the Board of Pharmacy, Department of Consumer Affairs
22 received an application for a pharmacy technician registration from Daneka Denise Smith
23 (Respondent). On or about April 4, 2013, Daneka Denise Smith certified under penalty of perjury
24 to the truthfulness of all statements, answers, and representations in the application. The Board
25 denied the application on November 4, 2013.

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1 **JURISDICTION**

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 references
4 are to the Business and Professions Code (Code) unless otherwise indicated.

5 4. Section 4300, subdivision (c) of the Code states "The board may refuse a license to
6 any applicant guilty of unprofessional conduct."

7 **STATUTORY PROVISIONS**

8 5. Section 475 of the Code states:

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

11 (1) Knowingly making a false statement of material fact, or knowingly omitting
12 to state a material fact, in an application for a license.

13 (2) Conviction of a crime.

14 (3) Commission of any act involving dishonesty, fraud or deceit with the intent
15 to substantially benefit himself or another, or substantially injure another.

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

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19 6. Section 480 of the Code states:

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

22 (1) Been convicted of a crime. A conviction within the meaning of this section
23 means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any
24 action that a board is permitted to take following the establishment of a conviction may be
25 taken when the time for appeal has elapsed, or the judgment of conviction has been
26 affirmed on appeal, or when an order granting probation is made suspending the
27 imposition of sentence, irrespective of a subsequent order under the provisions of Section
28 1203.4 of the Penal Code.

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

(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.

(B) 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.

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7. Section 482 of the Code states:

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.

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:

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

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(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.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(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.

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(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 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.

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REGULATORY PROVISIONS

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

(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.

(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.

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

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1 11. California Code of Regulations, title 16, section 1770 states:

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

8 **FIRST CAUSE FOR DENIAL OF APPLICATION**

9 **(December 16, 2002 Criminal Conviction for Petty Theft on December 8, 2002)**

10 12. Respondent's application for registration as a pharmacy technician is subject to denial
11 under section 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that she was convicted of a
12 crime that is substantially related to the qualifications, duties, and functions of a pharmacy
13 technician, and would be a ground for discipline under section 4301(l) of the Code for a registered
14 pharmacy technician. The circumstances are as follows:

15 a. On or about December 16, 2002, in a criminal proceeding entitled *State of*
16 *California v. Daneka Denise Dancy*, in the Superior Court of California, County of San Diego,
17 Case No. S172869, Respondent was convicted of violating Penal Code section 484 (petty theft), a
18 misdemeanor.

19 **SECOND CAUSE FOR DENIAL OF APPLICATION**

20 **(November 3, 2003 Criminal Conviction for Petty Theft With a Prior**
21 **on September 1, 2003)**

22 13. Respondent's application for registration as a pharmacy technician is subject to denial
23 under section 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that she was convicted of a
24 crime that is substantially related to the qualifications, duties, and functions of a pharmacy
25 technician, and would be a ground for discipline under section 4301(l) of the Code for a registered
26 pharmacy technician. The circumstances are as follows:

27 a. On or about November 3, 2003, in a criminal proceeding entitled *State of*
28 *California v. Daneka Denise Dancy*, in the Superior Court of California, County of San Diego,
Case No. S179000, Respondent was convicted of violating Penal Code section 484/666 (petty
theft with a prior), a misdemeanor.

1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 **(January 30, 2004 Criminal Conviction for Receiving Stolen Property**
3 **on January 21, 2004)**

4 14. Respondent's application for registration as a pharmacy technician is subject to denial
5 under section 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that she was convicted of a
6 crime that is substantially related to the qualifications, duties, and functions of a pharmacy
7 technician, and would be a ground for discipline under section 4301(l) of the Code for a registered
8 pharmacy technician. The circumstances are as follows:

9 a. On or about January 30, 2004, in a criminal proceeding entitled *State of California v.*
10 *Daneka Denise Dancy*, in the Superior Court of California, County of San Diego, Case
11 No. CS181894, Respondent was convicted on her plea of guilty of violating Penal Code section
12 496 (receiving stolen property), a misdemeanor.

13 b. As a result of the conviction, the Court placed Respondent on three years formal
14 probation, ordered her to serve 180 days in the county jail, with 61 days credit for time served, and
15 ordered her to pay various fines and fees. Respondent's probation was revoked on
16 February 18, 2005 and March 21, 2005, and the Court ordered her to serve 365 days in the county
17 jail, stayed pending completion of Public Work Service, with 181 days credit for time served, and
18 ordered her to enroll in and complete Public Service Work. On January 23, 2007, Respondent's
19 probation was revoked and she was remanded to the custody of the Sheriff without bail. On
20 February 22, 2007, the Public Work Service was deleted and the Court imposed the 365 days
21 custody. On October 17, 2007, Respondent filed a Petition for Relief under Penal Code section
22 1203.4 and the Court granted Respondent's Petition.

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FOURTH CAUSE FOR DENIAL OF APPLICATION

**(October 8, 2010 Criminal Conviction for Wet Reckless Driving
on July 28, 2010)**

15. Respondent’s application for registration as a pharmacy technician is subject to denial under section 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that she was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician, and would be a ground for discipline under section 4301(l) of the Code for a registered pharmacy technician. The circumstances are as follows:

a. On or October 8, 2010, in a criminal proceeding entitled *State of California v. Daneka Denise Dancy*, in the Superior Court of California, County of San Diego, Case No. C303429, Respondent was convicted on her plea of guilty of violating Vehicle Code section 23103(a) per Vehicle Code section 23103.5 (wet reckless driving), a misdemeanor. As a result of a plea bargain, a count for violating Vehicle Code section 23152(a) (DUI), a misdemeanor, was dismissed.

b. As a result of the conviction, the Court placed Respondent on three years summary probation and ordered her to pay various fines and fees, complete a First Conviction Program and a MADD Impact Panel.

FIFTH CAUSE FOR DENIAL OF APPLICATION

(Dangerous Use of Alcohol)

16. Respondent’s application for licensure is subject to denial under section 480, subdivision (a)(3)(A) of the Code in that on January 21, 2004, as described in paragraph 15, above, she used alcohol in a manner that was dangerous or injurious to herself or others, which would be a ground for discipline under section 4301(h) of the Code for a registered pharmacy technician.

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1 **SIXTH CAUSE FOR DENIAL OF APPLICATION**

2 **(Act Involving Dishonesty, Fraud, or Deceit)**

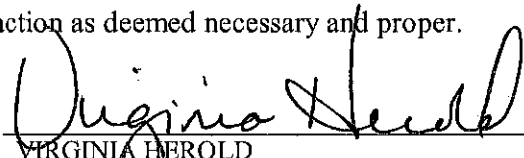
3 17. Respondent's application is subject to denial under sections 480, subdivision (a)(2) and
4 (c) of the Code in that on or about April 4, 2013, she committed an act of dishonesty, fraud and/or
5 deceit when, in response to the question on his application for registration as a pharmacy
6 technician, "Have you ever been convicted of any crime in any state, the USA and its territories,
7 military court or foreign country," Respondent responded, "No," and failed to disclosed the
8 convictions that are detailed at paragraphs 12-15, above, which would be a ground for discipline
9 under section 4301(f) and (g) of the Code for a registered pharmacy technician.

10 **PRAYER**

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

- 13 1. Denying the application of Daneka Denise Smith for a Pharmacy Technician
14 Registration;
15 2. Taking such other and further action as deemed necessary and proper.

16 DATED: 5/3/14

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18 VIRGINIA HEROLD
19 Executive Officer
20 Board of Pharmacy
21 Department of Consumer Affairs
22 State of California
23 Complainant

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