

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 GILLIAN E. FRIEDMAN
Deputy Attorney General
4 State Bar No. 169207
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2564
6 Facsimile: (213) 897-2804
Attorneys for Complainant
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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
12 Against:
13 **SOLOMON BJERKE**
14 Pharmacy Technician Registration Applicant
15 Respondent.

Case No. 5131

STATEMENT OF ISSUES

16
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
21 Affairs (Board).

22 2. On or about July 17, 2013, the Board received an application for a/an Pharmacy
23 Technician Registration from Solomon Bjerke (Respondent). On or about June 28, 2013,
24 Solomon Bjerke certified under penalty of perjury to the truthfulness of all statements, answers,
25 and representations in the application. The Board denied the application on December 18, 2013.

26 **JURISDICTION**

27 3. This Statement of Issues is brought before the Board, under the authority of the
28 following laws. All section references are to the Business and Professions Code unless otherwise

1 indicated.

2 **STATUTORY PROVISIONS**

3 4. Section 480 states, in pertinent part:

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

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

12

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

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

18 "(b) Notwithstanding any other provision of this code, no person shall be denied a license
19 solely on the basis that he or she has been convicted of a felony if he or she has obtained a
20 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
21 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
22 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
23 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
24 Section 482. . . ."

25 5. Section 490 provides that a board may suspend or revoke a license on the ground that
26 the licensee has been convicted of a crime substantially related to the qualifications, functions, or
27 duties of the business or profession for which the license was issued.

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1 6. Section 4300, subdivision (c), states, in pertinent part:

2 "The board may refuse a license to any applicant guilty of unprofessional conduct. The
3 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
4 guilty of unprofessional conduct and who has met all other requirements for licensure. The board
5 may issue the license subject to any terms or conditions not contrary to public policy, . . ."

6 7. Section 4301 states, in pertinent part:

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

10

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

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

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.

3

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

7 **REGULATORY PROVISION**

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

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

15 **FIRST CAUSE FOR DENIAL OF APPLICATION**

16 **(Convictions of Substantially Related Crimes)**

17 9. Respondent's application is subject to denial under sections 480, subdivision (a),
18 and 4300, subdivision (c), and 4301, subdivision (l), on the grounds of unprofessional conduct,
19 and sections 480, subdivision (a)(3)(A)(B), and 490, in conjunction with California Code of
20 Regulations, title 16, section 1770, in that Respondent was convicted of crimes substantially
21 related to the qualifications, functions or duties of a licensee or registrant which to a substantial
22 degree evidence his present or potential unfitness to perform the functions authorized by his
23 license or registration in a manner consistent with the public health, safety, or welfare, as follows:

24 a. On or about July 26, 2011, after pleading guilty, Respondent was convicted of one
25 misdemeanor count of violating ORS section 811.182 [drive while suspended] in the criminal
26 proceeding entitled *State of Oregon v. Solomon Bjerke* (Muni. Ct. Clackamas County, 2011,
27 No. 11-1770). The Court placed Respondent on 18 months probation. The circumstances
28 underlying the conviction are that on or about May 31, 2011, Respondent drove a vehicle while

1 his driver's license was suspended.

2 b. On or about June 3, 2011, after pleading guilty, Respondent was convicted of one
3 misdemeanor count of violating Oregon Revised Statute (ORS) section 813.010 [driving under
4 the influence of intoxicants, DUI I] in the criminal proceeding entitled *State of Oregon v.*
5 *Solomon Bjerke* (Cr. Ct. Washington County, 2011, No. D110726T). The Court placed
6 Respondent on two (2) years probation, and ordered him to complete a DUI I Victims' Panel and
7 Alcohol Evaluation Treatment and Counseling. The circumstances underlying the conviction are
8 that on or about February 1, 2011, Respondent drove while under the influence of a tested
9 0.117/0.119% BAC.

10 c. On or about May 4, 2011, after pleading guilty, Respondent was convicted of one
11 misdemeanor count of violating ORS section 811.182 [drive while suspended] in the criminal
12 proceeding entitled *State of Oregon v. Solomon Bjerke* (Muni. Ct. Clackamas County, 2011,
13 No. 11M104242). The Court placed Respondent on 18 months probation. The circumstances
14 underlying the conviction are that on or about March 11, 2011, Respondent drove a vehicle while
15 his driver's license was suspended.

16 d. On or about February 12, 2009, after pleading guilty, Respondent was convicted of
17 one misdemeanor count of violating Nevada Revised Statute (NRS) sections 484.379 and
18 484.3792 [drive while under the influence of alcohol or with a greater than 0.08% blood alcohol
19 content (BAC)] in the criminal proceeding entitled *State of Nevada v Solomon Bjerke* (J. Ct.
20 Washoe County, 2009, No. RCR2009-046128). The Court ordered Respondent to complete 48
21 hours community service, a Level I Alcohol and Drug Abuse Program, and the Victims Impact
22 Panel. The circumstances underlying the conviction are that on or about January 1, 2009,
23 Respondent drove while under the influence of a tested 0.192% BAC.

24 **SECOND CAUSE FOR DENIAL OF APPLICATION**

25 **(Convictions Involving Alcoholic Beverages)**

26 10. Respondent's application is subject to denial under section 4300, subdivision (c), and
27 4301, subdivision (k), on the grounds of unprofessional conduct, in that Respondent sustained
28 two (2) misdemeanor convictions involving the use, consumption, or self-administration of

1 alcoholic beverages. Respondent's convictions involving alcoholic beverages were on or about
2 February 12, 2009, and June 3, 2011. Complainant refers to and by this reference incorporates the
3 allegations set forth above in paragraph 9, subparagraphs (b) and (d), as though set forth fully.

4 **THIRD CAUSE FOR DENIAL OF APPLICATION**

5 **(Discipline by the State of Oregon, Board of Pharmacy)**

6 11. Respondent's application is subject to denial under section 4300, subdivision (c), and
7 4301, subdivision (n), on the grounds of unprofessional conduct, in that on or about October 1,
8 2013, the State of Oregon, Board of Pharmacy issued Respondent a Consent Order in the
9 administrative matter entitled *In the Matter of the Technician License of Solomon Bjerke*, Case
10 No. 2013-0173, placing Respondent on three (3) years probation pursuant to certain terms and
11 conditions. On the grounds of unprofessional conduct, Respondent violated the Oregon Pharmacy
12 Act and the Board of Pharmacy rules. The circumstances were that by Respondent's August 30,
13 2011 and August 31, 2012 renewal application for his pharmacy technician license, Respondent
14 failed to report arrests in the State of Oregon. Such arrests are described in paragraphs 9(a)-(c)
15 above.

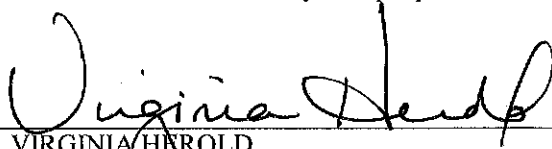
16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
18 and that following the hearing, the Board issue a decision:

- 19 1. Denying the application of Solomon Bjerke for a Pharmacy Technician Registration;
20 and
21 2. Taking such other and further action as deemed necessary and proper.

22
23 DATED: _____

7/26/14



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

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