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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. 5478

13 **DANIEL YOUNG OH**

STATEMENT OF ISSUES

14 **Pharmacist License Applicant**

15 Respondent.

16 Complainant alleges:

17 PARTIES

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 June 11, 2014, the Board of Pharmacy, Department of Consumer Affairs
21 received an application for a Pharmacist License from Daniel Young Oh (Respondent). On or
22 about May 16, 2014, Daniel Young Oh certified under penalty of perjury to the truthfulness of all
23 statements, answers, and representations in the application. The Board denied the application on
24 May 1, 2015.

25 JURISDICTION AND STATUTORY AUTHORITY

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 unless otherwise indicated.

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4. Section 475 of the Code states:

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

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

(2) Conviction of a crime.

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

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

....

5. Section 480 of the Code states:

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

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the 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, 1203.4a, or 1203.41 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.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under

1 subdivision (a) of Section 482.

2 (c) Notwithstanding any other provisions of this code, a person shall not be
3 denied a license solely on the basis of a conviction that has been dismissed
4 pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant
5 who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a,
6 or 1203.41 of the Penal Code shall provide proof of the dismissal.

7 (d) A board may deny a license regulated by this code on the ground that the
8 applicant knowingly made a false statement of fact required to be revealed in the
9 application for the license.

10 6. Section 482 of the Code states:

11 Each board under the provisions of this code shall develop criteria to
12 evaluate the rehabilitation of a person when:

13 (a) Considering the denial of a license by the board under Section 480; or

14 (b) Considering suspension or revocation of a license under Section 490.

15 Each board shall take into account all competent evidence of rehabilitation
16 furnished by the applicant or licensee.

17 7. Section 493 of the Code states:

18 Notwithstanding any other provision of law, in a proceeding conducted by a
19 board within the department pursuant to law to deny an application for a license or
20 to suspend or revoke a license or otherwise take disciplinary action against a
21 person who holds a license, upon the ground that the applicant or the licensee has
22 been convicted of a crime substantially related to the qualifications, functions, and
23 duties of the licensee in question, the record of conviction of the crime shall be
24 conclusive evidence of the fact that the conviction occurred, but only of that fact,
25 and the board may inquire into the circumstances surrounding the commission of
26 the crime in order to fix the degree of discipline or to determine if the conviction is
27 substantially related to the qualifications, functions, and duties of the licensee in
28 question.

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

8. Section 4300 of the Code states:

....

(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. The board may issue the license subject to any

1 terms or conditions not contrary to public policy, including, but not limited to, the
2 following:

- 3 (1) Medical or psychiatric evaluation.
- 4 (2) Continuing medical or psychiatric treatment.
- 5 (3) Restriction of type or circumstances of practice.
- 6 (4) Continuing participation in a board-approved rehabilitation program.
- 7 (5) Abstention from the use of alcohol or drugs.
- 8 (6) Random fluid testing for alcohol or drugs.
- 9 (7) Compliance with laws and regulations governing the practice of
10 pharmacy.

11

12 9. Section 4301 of the Code states:

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

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

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

23 (h) The administering to oneself, of any controlled substance, or the use of
24 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be
25 dangerous or injurious to oneself, to a person holding a license under this chapter,
26 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
28 the license.

. . . .

(j) The violation of any of the statutes of this state, or any other state, or of
the United States regulating controlled substances and dangerous drugs.

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.

23

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

27

28 (p) Actions or conduct that would have warranted denial of a license.

. . . .

10. 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.

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FIRST CAUSE FOR DENIAL

(April 10, 2015 Criminal Conviction for DUI on August 23, 2014)

11. Respondent's application for a pharmacist license is subject to denial under Code section 480, subdivision (a)(1) in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

a. On or about April 10, 2015, in a criminal proceeding entitled *People of the State of California v. Daniel Young Oh*, Orange County Superior Court, case number 14HM07469, Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152(a), driving under the influence of alcohol and 23152(b), driving with a blood alcohol content of .08 percent or more, both misdemeanors.

b. As a result of the conviction, Respondent was placed on probation for five years, sentenced to ninety days in custody, ordered to pay fines, required to complete an outpatient program, MADD Victim's Impact Panel, and a 18 month multiple offender alcohol program.

c. The circumstances of the conviction are that on or about August 23, 2014, officers were dispatched to a call of a possible DUI driver. The officers observed a vehicle that matched the description given by dispatch and watched it pull into the parking lot and turns towards a Del Taco restaurant. Officers observed that the vehicle almost collided with the raised curb as it approached the drive-thru. Officers activated their emergency lights, siren, and air horn as the vehicle continued to move forward through the drive-thru. The vehicle did not react or stop to the lights and siren. Once the vehicle came to a stop at the drive-thru menu, the officers made contact with the driver, who was identified as Respondent.

d. Officers noticed a strong smell of alcoholic beverage emitting from Respondent's breath and person, and Respondent had bloodshot and watery eyes. Respondent told officers that he felt "perfectly fine" but he failed the Field Sobriety tests. Respondent's blood alcohol content was .17. Respondent was arrested for driving under the influence. During the search of Respondent's vehicle, officers discovered a container with marijuana. Respondent told officers that he did not have a valid medical recommendation to possess or smoke marijuana.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(April 16, 2008 Criminal Conviction for Driving with a BAC of .08 percent or more on**
3 **January 18, 2008)**

4 12. Respondent's application for a pharmacist license is subject to denial under Code
5 section 480, subdivision (a)(1) in that he was convicted of a crime that is substantially related to
6 the qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

7 a. On or about April 16, 2008, in a criminal proceeding entitled *People of the State of*
8 *California v. Daniel Young Oh*, Yolo County Superior Court, case number 08-959, Respondent
9 was convicted on his plea of no contest to violating Vehicle Code section 23152(b), driving with
10 a blood alcohol content of .08 percent or more.

11 b. As a result of the conviction, Respondent was sentenced to thirty-six months informal
12 probation, required to pay fines and fees, ordered to complete a nine month program, and
13 sentenced to six days in custody. On or about April 29, 2014, Respondent's conviction was
14 dismissed pursuant to Penal Code section 1203.4/1203.4a.

15 c. The circumstances of the conviction are that on January 18, 2008, officers of the
16 Davis Police Department observed a vehicle that was double parked in the road. The vehicle then
17 legally parked on the street. Respondent, who was the driver of the vehicle, exited the car and
18 staggered towards a restaurant. The officer observed Respondent bumping into people as he
19 entered the restaurant. The officer contacted Respondent inside the restaurant and observed that
20 Respondent had red water eyes and slurred speech. When questioned, Respondent admitted that
21 he had driven to the restaurant from a bar and that he had consumed two Vodka Redbulls that
22 evening. Respondent failed field sobriety tests and was arrested for suspicion of DUI. His BAC
23 was .22 percent.

24 **THIRD CAUSE FOR DENIAL**

25 **(August 14, 2007 Criminal Conviction for Public Intoxication on April 8, 2007)**

26 13. Respondent's application for a pharmacist license is subject to denial under Code
27 section 480, subdivision (a)(1) in that he was convicted of a crime that is substantially related to
28 the qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

1 a. On or about August 14, 2007, in a criminal proceeding entitled *People of the State of*
2 *California v. Daniel Oh*, Yolo County Superior Court, case number 07-2467, Respondent was
3 convicted on his plea of no contest to violating Penal Code section 647(f), public intoxication, a
4 misdemeanor.

5 b. As a result of the conviction, Respondent was placed on informal probation for one
6 year, ordered to pay fines and fees, and sentenced to fifteen days in custody. Respondent's
7 probation was terminated unsuccessfully on April 16, 2008 as a result of a conviction for driving
8 under the influence in Yolo County Superior court case number 08-959. On or about April 29,
9 2014, Respondent's conviction was dismissed pursuant to Penal Code section 1203.4/1203.4a.

10 c. The circumstances of the conviction are that on or about April 8, 2007, officers were
11 dispatched to a report of a "man down" in the street. Upon arrival, officers found Respondent
12 lying on his back with his head in the gutter and towel over his head. Officers called out to
13 Respondent several times and shook his shoulders but Respondent was unresponsive and
14 appeared unconscious. Officers observed an odor of alcohol on Respondent. Officers were able
15 to wake Respondent by rubbing him on the sternum. Upon awaking, Respondent attacked one of
16 the officers by swinging his arms and kicking. Officers struggled to restrain Respondent and had
17 to use a taser to control him. Respondent did not know his age, his address or social security
18 number. Respondent told officers that he was out partying but did not know how much alcohol
19 he drank or how he ended up lying in a gutter with a towel over his head.

20 **FOURTH CAUSE FOR DENIAL**

21 **(Acts Involving Dishonesty, Fraud, or Deceit)**

22 14. Respondent's application is subject to denial under section 480, subdivision (a)(2) in
23 that, Respondent engaged in acts involving dishonesty, fraud, or deceit with the intent to
24 substantially benefit himself. The circumstances are as follows:

25 a. On or about May 8, 2012, Respondent signed an application for an Intern
26 Pharmacist License with the Board of Pharmacy. On the application, Respondent falsely marked
27 "no" to the question asking if he had ever been convicted of a crime. Respondent failed to
28 disclose on his application that he was convicted of Vehicle Code section 23152(b), driving with

1 a blood alcohol content of .08 percent or more on April 16, 2008, a misdemeanor. Respondent
2 also failed to disclose that he was convicted of Penal Code section 647(f), public intoxication, a
3 misdemeanor, on August 14, 2007.

4 b. On or about May 17, 2012, the Board of Pharmacy issued Intern Pharmacist
5 Registration Number INT 29660 to Daniel Young Oh. The Board did not learn of the public
6 intoxication conviction on August 14, 2007, until well after it licensed Respondent.

7 **FIFTH CAUSE FOR DENIAL**

8 **(Acts Done by Licentiate)**

9 15. Respondent's application is subject to denial under section 480, subdivision (a)(3) in
10 that, Respondent engaged in acts which, if done by a licentiate, would constitute grounds for a
11 suspension or revocation of licensure. The circumstances are as follows:

12 a. Respondent was convicted of crimes that are substantially related to the
13 qualifications, duties, and functions of a pharmacist, acts which would be grounds for revocation
14 of licensure if done by a licentiate, under sections 490 and 4301, subdivision (l).

15 b. Respondent used alcohol in a dangerous manner, acts which would be grounds
16 for revocation of licensure if done by a licentiate, under section 4301, subdivision (h).

17 c. Respondent has been convicted of three misdemeanors involving the use,
18 consumption or self-administration of alcoholic beverage, acts which would be grounds for
19 revocation of licensure if done by a licentiate, under section 4301, subdivision (k).

20 d. Respondent committed dishonest acts in that he knowingly made a false
21 statement of fact on his application for licensure as a Pharmacist Intern, an act which would be
22 grounds for revocation of licensure if done by a licentiate under section 4301, subdivisions (f)
23 and (g).

24 e. Respondent illegally possessed controlled substances, marijuana, on August 23,
25 2014, in violation of California and United States statutes regulating controlled substances, an act
26 which would be grounds for revocation of licensure if done by a licentiate under section 4301,
27 subdivision (j).

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1 AGGRAVATING CIRCUMSTANCES

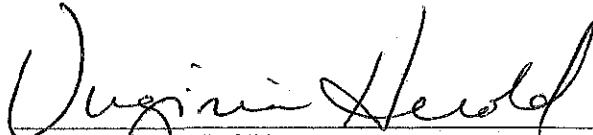
2 16. On or about May 20, 2013, in a prior action against Respondent's Intern Pharmacist
3 Registration Number INT 29660, the Board of Pharmacy issued Citation Number CI 2012 53246
4 for violations of Business and Professions Code section 4301, subdivisions (g) for knowingly
5 making or signing a certificate or other document that falsely represents the existence or
6 nonexistence of facts; subdivision (h) for using alcohol in a dangerous manner; subdivision (l)
7 for sustaining a conviction that is substantially related to the practice of pharmacy; and
8 subdivision (q) for engaging in conduct that subverts or attempts to subvert an investigation of
9 the Board. The Citation ordered Respondent to pay a fine in the amount of \$5,000.00.
10 Respondent complied with the Citation and it is now final.

11 PRAYER

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

- 14 1. Denying the application of Daniel Young Oh for a Pharmacist License;
15 2. Taking such other and further action as deemed necessary and proper.

16
17 DATED: 6/13/15


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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