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

11 In the Matter of the Accusation Against:
12 **MOHAMED SAYED HAFEZ A. ISMAEIL**
aka MOHAMED SAYED ISMAEIL
13 5501 Norris Road, Apt 49
14 Bakersfield, CA 93308
15 Intern Pharmacist Registration No. INT 33563
16 Respondent.

Case No. 5476
OAH No. 2016030288
WITHDRAWAL OF ACCUSATION AND
STATEMENT OF ISSUES
Hearing: Monday, April 25, 2016

17 In the Matter of the Statement of Issues
Against:
18 **MOHAMED SAYED HAFEZ A. ISMAEIL**
aka MOHAMED SAYED ISMAEIL
19 Pharmacist License Applicant
20 Respondent.

Case No. 5721
OAH No. 2016030292
(Consolidated with OAH Case No.
2016030288)

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Virginia Herold ("Complainant") solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, hereby withdraws, without prejudice, the Accusation and Statement of Issues filed in the above-entitled matters on January 26, 2016.

DATED: 4/14/16 

VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
State of California
Complainant

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

11 In the Matter of the Statement of Issues
12 Against:
13 **MOHAMED SAYED HAFEZ A. ISMAEIL**
aka MOHAMED SAYED ISMAEIL
14 Pharmacist License Applicant
15 Respondent.

Case No. 5721
STATEMENT OF ISSUES

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 (“Board”).
22 2. On or about August 27, 2015, the Board received an application for a Pharmacist
23 License from Mohamed Sayed Hafez A. Ismaeil aka Mohamed Sayed Ismaeil (“Respondent”).
24 On or about August 24, 2015, Mohamed Sayed Hafez A. Ismaeil certified under penalty of
25 perjury to the truthfulness of all statements, answers, and representations in the application. The
26 Board denied the application on December 17, 2015.

27 **Intern Pharmacist Registration**

28 3. On or about July 10, 2014, the Board issued Intern Pharmacist Registration No.

1 INT 33563 to Respondent. The Intern Pharmacist Registration was in full force and effect at all
2 times relevant to the charges brought herein and will expire on July 31, 2016, unless renewed.

3 **JURISDICTION**

4 4. This Statement of Issues is brought before the Board, under the authority of the
5 following laws. All section references are to the Business and Professions Code ("Code") unless
6 otherwise indicated.

7 5. Section 4300 of the Code states, in pertinent part:

8

9 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct.
10 The board may, in its sole discretion, issue a probationary license to any applicant for a license
11 who is guilty of unprofessional conduct and who has met all other requirements for licensure.
12 The board may issue the license subject to any terms or conditions not contrary to public policy.
13 . . ."

14 **STATUTORY AND REGULATORY PROVISIONS**

15 6. Section 480 of the Code states, in pertinent part:

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

18 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
19 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
20 board is permitted to take following the establishment of a conviction may be taken when the
21 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
22 an order granting probation is made suspending the imposition of sentence, irrespective of a
23 subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

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

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

28 (B) The board may deny a license pursuant to this subdivision only if the crime or

1 act is substantially related to the qualifications, functions, or duties of the business or profession
2 for which application is made.

3 “(b) Notwithstanding any other provision of this code, a person shall not be denied a license
4 solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate
5 of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the
6 Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable
7 requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
8 person when considering the denial of a license under subdivision (a) of Section 482.

9 “(c) Notwithstanding any other provisions of this code, a person shall not be denied a
10 license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4,
11 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been
12 dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof
13 of the dismissal.

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

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

18

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

22

23 “(l) The conviction of a crime substantially related to the qualifications, functions, and
24 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
25 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
26 substances or of a violation of the statutes of this state regulating controlled substances or
27 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
28 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

1 The board may inquire into the circumstances surrounding the commission of the crime, in order
2 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
3 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
4 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
5 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
6 of this provision. The board may take action when the time for appeal has elapsed, or the
7 judgment of conviction has been affirmed on appeal or when an order granting probation is made
8 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
9 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
10 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
11 indictment. . . .”

12 8. California Code of Regulations, title 16, section 1770, states, in pertinent part:

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

19 **FIRST CAUSE FOR DENIAL OF APPLICATION**

20 **(Acts of Dishonesty, Fraud, or Deceit)**

21 9. Respondent's application is subject to denial under Code section 480, subdivision
22 (a)(2), in that Respondent committed acts involving dishonesty, fraud, or deceit with the intent to
23 substantially benefit himself or another, or substantially injure another, as follows:

24 a. On or about August 23, 2013 to on or about September 2, 2014, Respondent
25 manufactured and sold counterfeit clothing at a shopping center in Los Angeles, CA. Respondent
26 used a heat transfer machine to manufacture the clothing items, and sold the clothing to
27 customers.

28 b. On or about February 4, 2015, Respondent entered a plea of nolo contendere for one

1 misdemeanor count of violating Penal Code section 350, subdivision (a)(1) [manufacture, sell,
2 and knowingly possess for sale a counterfeit of a registered mark], in the criminal proceeding
3 entitled *The People of the State of California* (Super. Ct. L.A. County, 2015, No. 4BF04683).

4 The Court placed Respondent on 12 months Deferred Entry of Judgment, ordered him to perform
5 16 days of community service, pay a fine of \$500.00, and restitution of \$3,330.16 for
6 investigative costs.

7 **SECOND CAUSE FOR DENIAL OF APPLICATION**

8 **(Conviction of a Substantially Related Crime)**

9 10. Respondent's application is subject to denial under Code section 480, subdivision
10 (a)(1), in that Respondent was convicted of a substantially related crime. Complainant refers to
11 and by this reference incorporates the allegations set for above in paragraph 9, subparagraph b,
12 inclusive, as though set forth fully.

13 **THIRD CAUSE FOR DENIAL OF APPLICATION**

14 **(Acts Warranting Discipline of Licensure)**

15 11. Respondent's application is subject to denial under Code section 480, subdivision
16 (a)(3), on the grounds of unprofessional conduct, in that Respondent committed acts which if
17 done by a pharmacist, would be grounds for suspension or revocation of the license, as follows:

18 a. Code section 4301, subdivision (f), in conjunction with California Code of
19 Regulations, title 16, section 1770, on the grounds of unprofessional conduct, in that on or about
20 August 23, 2013 to on or about September 2, 2014, Respondent committed acts involving moral
21 turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to and by this reference
22 incorporates the allegations set for above in paragraph 9, as though set forth fully.

23 b. Code section 4301, subdivision (l), in conjunction with California Code of
24 Regulations, title 16, section 1770, in that on February 4, 2015, Respondent was convicted of a
25 crime substantially related to the qualifications, functions, or duties of a pharmacist which to a
26 substantial degree evidence his present or potential unfitness to perform the functions authorized
27 by license in a manner consistent with the public health, safety, or welfare. Complainant refers to
28 and by this reference incorporates the allegations set for above in paragraphs 9 and 10, as though

1 set forth fully.

2 **PRAYER**

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

- 5 1. Denying the application of Mohamed Sayed Hafez A. Ismaeil aka Mohamed Sayed
- 6 Ismaeil for a Pharmacist License; and
- 7 2. Taking such other and further action as deemed necessary and proper.

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10 DATED: _____

1/26/16

Virginia Herold

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

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