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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 First Amended Statement  
of Issues Against:

Case No. 5732

12 **BRENT EUGENE BJERKE**

**FIRST AMENDED STATEMENT OF  
ISSUES**

13 **Pharmacist License Applicant**

14 Respondent.

15  
16 Complainant alleges:

17 **PARTIES**

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

21 2. On or about May 23, 2013, the Board of Pharmacy (Board) received an application  
22 for a Pharmacist License from Brent Eugene Bjerke (Respondent). On or about April 26, 2013,  
23 Brent Eugene Bjerke certified under penalty of perjury to the truthfulness of all statements,  
24 answers, and representations in the application. The Board denied the application on November  
25 20, 2015.

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28 ///

1 JURISDICTION

2 3. This First Amended Statement of Issues is brought before the Board under the  
3 authority of the following laws. All section references are to the Business and Professions Code  
4 unless otherwise indicated.

5 STATUTORY PROVISIONS

6 4. Section 480 states, in pertinent part:

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

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

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

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

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

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

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

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

9           5. Section 490 states, in pertinent part:

10           “(a) In addition to any other action that a board is permitted to take against a licensee, a  
11 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
12 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
13 or profession for which the license was issued.

14           “(b) Notwithstanding any other provision of law, a board may exercise any authority to  
15 discipline a licensee for conviction of a crime that is independent of the authority granted under  
16 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
17 of the business or profession for which the licensee’s license was issued.

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

24           6. Section 493 states:

25           "Notwithstanding any other provision of law, in a proceeding conducted by a board within  
26 the department pursuant to law to deny an application for a license or to suspend or revoke a  
27 license or otherwise take disciplinary action against a person who holds a license, upon the  
28 ground that the applicant or the licensee has been convicted of a crime substantially related to the

1 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
2 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
3 and the board may inquire into the circumstances surrounding the commission of the crime in  
4 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
5 qualifications, functions, and duties of the licensee in question.

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

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

16 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous  
17 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
18 oneself, to a person holding a license under this chapter, or to any other person or to the public, or  
19 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
20 practice authorized by the license.

21 . . . .

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

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

11 . . . .

12 “(p) Actions or conduct that would have warranted denial of a license.”

### 13 REGULATORY PROVISIONS

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

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

### 21 FIRST CAUSE FOR DENIAL OF APPLICATION

#### 22 (Conviction of Substantially Related Crimes)

23 9. Respondent's application is subject to denial under section 480, subdivision (a)(1), in  
24 conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was  
25 convicted of crimes that, to a substantial degree, evidence a present or potential unfitness to  
26 perform the functions of a licensed pharmacist in a manner consistent with the public health,  
27 safety, or welfare.

28 ///





1 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
2 paragraphs 9 and 10, inclusive, as though set forth fully.

3 c. On or about April 26, 2013, Respondent knowingly made or signed a certificate or  
4 document that falsely represents the existence or nonexistence of a state of facts, by failing to  
5 disclose his May 29, 2001 conviction case on his application for licensure, which would be  
6 grounds for denial of an application for a license, in violation of section 4301, subdivision (g).

7 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
8 paragraphs 9 and 11, inclusive, as though set forth fully.

9 d. Respondent used alcoholic beverages to the extent or in a manner as to be dangerous  
10 or injurious to himself, another person, or the public, which would be grounds for denial of an  
11 application for a license, in violation of section 4301, subdivision (h). Complainant refers to, and  
12 by this reference incorporates, the allegations set forth above in paragraph 9, as though set forth  
13 fully.

14 e. Respondent committed acts which would be grounds for denial of an application for a  
15 license, in violation of section 4301, subdivision (p). Complainant refers to, and by this reference  
16 incorporates, the allegations set forth above in paragraphs 9 through 12, subparagraphs (a)  
17 through (d), inclusive, as though set forth fully.

18 **PRAYER**

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

- 21 1. Denying the application of Brent Eugene Bjerke for a Pharmacist License; and  
22 2. Taking such other and further action as deemed necessary and proper.

23  
24 DATED: 3/6/17



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

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28 Bjerke Amended Statment of Issues.docx

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7 *Attorneys for Complainant*

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

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Against:

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13 **BRENT EUGENE BJERKE**

**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 May 23, 2013, the Board of Pharmacy (Board) received an application  
21 for a Pharmacist License from Brent Eugene Bjerke (Respondent). On or about April 26, 2013,  
22 Brent Eugene Bjerke certified under penalty of perjury to the truthfulness of all statements,  
23 answers, and representations in the application. The Board denied the application on November  
24 20, 2015.

25 **JURISDICTION**

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

STATUTORY PROVISIONS

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2       4.     Section 480 states, in pertinent part:

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

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

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

13           “(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be  
14 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, a person shall not be denied a  
19 license 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           “(c) Notwithstanding any other provisions of this code, a person shall not be denied a  
26 license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4,  
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1 dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof  
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4 knowingly made a false statement of fact that is required to be revealed in the application for the  
5 license.”

6 5. Section 490 states, in pertinent part:

7 “(a) In addition to any other action that a board is permitted to take against a licensee, a  
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9 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
10 or profession for which the license was issued.

11 “(b) Notwithstanding any other provision of law, a board may exercise any authority to  
12 discipline a licensee for conviction of a crime that is independent of the authority granted under  
13 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of  
14 the business or profession for which the licensee’s license was issued.

15 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
16 conviction following a plea of nolo contendere. An action that a board is permitted to take  
17 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
18 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
19 made suspending the imposition of sentence, irrespective of a subsequent order under Section  
20 1203.4 of the Penal Code.”

21 6. Section 493 states:

22 "Notwithstanding any other provision of law, in a proceeding conducted by a board within  
23 the department pursuant to law to deny an application for a license or to suspend or revoke a  
24 license or otherwise take disciplinary action against a person who holds a license, upon the ground  
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2 qualifications, functions, and duties of the licensee in question.

3 7. Section 4301 states, in pertinent part:

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5 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.  
6 Unprofessional conduct shall include, but is not limited to, any of the following:

7 . . . .

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

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

13 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous  
14 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
15 oneself, to a person holding a license under this chapter, or to any other person or to the public, or  
16 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
17 practice authorized by the license.

18 . . . .

19 "(l) The conviction of a crime substantially related to the qualifications, functions, and  
20 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
21 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
22 substances or of a violation of the statutes of this state regulating controlled substances or  
23 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other  
24 cases, the record of conviction shall be conclusive evidence only of the fact that the conviction  
25 occurred. The board may inquire into the circumstances surrounding the commission of the crime,  
26 in order to fix the degree of discipline or, in the case of a conviction not involving controlled  
27 substances or dangerous drugs, to determine if the conviction is of an offense substantially related  
28 to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of

1 guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the  
2 meaning of this provision. The board may take action when the time for appeal has elapsed, or the  
3 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
4 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
5 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
6 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
7 indictment.

8 . . . .

9 “(p) Actions or conduct that would have warranted denial of a license.”

10 **REGULATORY PROVISIONS**

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

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

18 **FIRST CAUSE FOR DENIAL OF APPLICATION**

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

20 9. Respondent's application is subject to denial under section 480, subdivision (a)(1), in  
21 conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was  
22 convicted of a crime that, to a substantial degree, evidenced a present or potential unfitness to  
23 perform the functions of a licensed pharmacist in a manner consistent with the public health, safety,  
24 or welfare. Specifically, On or about May 29, 2001, Respondent was convicted of one  
25 misdemeanor count of violating Penal Code section 602, subdivision (L) [trespass: occupying  
26 property without consent] in the criminal proceeding entitled *The People of the State of California*  
27 *v. Brent Eugene Bjerke* (Super. Ct. Santa Barbara County, 2001, No. 1055771). The court  
28 sentenced Respondent to serve 10 days in jail and placed him on 12 months probation, with terms

1 and conditions. The circumstances underlying the conviction are that on or about April 25, 2001,  
2 Respondent entered the land under cultivation or enclosed by fence, belonging to, or occupied by  
3 another where signs forbidding trespass are displayed, without the permission of the owner of the  
4 land, the owner's agent, or the person in lawful possession.

5 **SECOND CAUSE FOR DENIAL OF APPLICATION**

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

7 10. Respondent's application is subject to denial under section 480, subdivision (a)(2), in  
8 that on or about April 26, 2013, Respondent committed dishonest acts, fraud, or deceit with the  
9 intent to substantially benefit himself, or substantially injure another, by failing to disclose his May  
10 29, 2001 conviction case on his application for licensure. Complainant refers to, and by this  
11 reference incorporates, the allegations set forth above in paragraph 9 and below in paragraph 11,  
12 as though set forth fully.

13 **THIRD CAUSE FOR DENIAL OF APPLICATION**

14 **(Knowingly Made A False Statement of Fact on Application for Licensure)**

15 11. Respondent's application is subject to denial under section 480, subdivision (d), in that  
16 Respondent knowingly made a false statement of fact on his application for licensure by failing to  
17 disclose his complete criminal history. On or about April 26, 2013, when Respondent filled out his  
18 application for licensure he was asked: "Have you ever been convicted of any crime in any state,  
19 the USA and its territories, military court or foreign country? Respondent answered: "Yes" to this  
20 question. However, he only disclosed his June 2001 conviction for possession while driving.  
21 Respondent failed to disclose his May 29, 2001 conviction case. Complainant refers to, and by  
22 this reference incorporates, the allegations set forth above in paragraph 9, as though set forth fully.  
23 In addition, Respondent signed under penalty of perjury, under the laws of the State of California,  
24 that the foregoing was true and correct on his application for licensure.

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1 verbal argument, Respondent battered the victim resulting in serious bodily injury to the victim's  
2 face and body and Respondent fled from the scene. The victim was transported to the hospital  
3 with a broken nose, broken sinus, broken left orbital bone, left ear contusion, and chest contusion.  
4 An officer observed Respondent to be intoxicated with blood on his clothes and arms.  
5 Respondent admitted that he had been involved in a fight.

6 e. Respondent committed acts which would be grounds for denial of an application for a  
7 license, in violation of section 4301, subdivision (p). Complainant refers to, and by this reference  
8 incorporates, the allegations set forth above in paragraphs 9 through 12, subparagraphs (a)  
9 through (d), inclusive, as though set forth fully.

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 Brent Eugene Bjerke for a Pharmacist License; and  
14 2. Taking such other and further action as deemed necessary and proper.

15  
16  
17 DATED: 6/13/16

  
\_\_\_\_\_  
VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
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*Complainant*

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