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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues
11 Against:

Case No. 6867

12 **JOSEPH M. ENSSLIN VARGAS**
13 **aka JOSEPH M. ENSSLINVARGAS**

STATEMENT OF ISSUES

14 **Pharmacy Technician Applicant.**

15 Respondent.

16
17 Anne Sodergren (Complainant) alleges:

18 **PARTIES**

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

21 2. On or about July 29, 2019, the Board received an application for a pharmacy
22 technician license from Joseph Ensslin Vargas, also known as Joseph Ensslinvargas
23 (Respondent). On or about July 25, 2019, Respondent certified under penalty of perjury to the
24 truthfulness of all statements, answers, and representations in the application. The Board denied
25 the application on October 9, 2019.

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1 **JURISDICTION**

2 3. Pursuant to Business and Professions Code (Code) section 485(b), on or about
3 October 9, 2019, Respondent’s application was denied and he was notified of the right to a
4 hearing to appeal the denial.

5 4. On or about November 19, 2019, the Board received Respondent’s request for a
6 hearing to appeal the denial of his application.

7 **STATUTORY PROVISIONS**

8 5. Code section 480 states, in pertinent part:

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

11 (1) Been convicted of a crime. A conviction within the meaning of this section
12 means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
13 Any action that a board is permitted to take following the establishment of a
14 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 of the Penal Code.

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

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

20 (b) Notwithstanding any other provision of this code, a person shall not be
21 denied a license solely on the basis that he or she has been convicted of a felony if he
22 has obtained a certificate of rehabilitation under Section 4852.01 and following of the
23 Penal Code or that he has been convicted of a misdemeanor if he 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
subdivision (a) of Section 482.

24 6. Code section 4300 states, in pertinent part:

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26 (c) The board may refuse a license to any applicant guilty of unprofessional
27 conduct. The board may, in its sole discretion, issue a probationary license to any
28 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
terms or conditions not contrary to public policy, including, but not limited to, the
following:

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

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9 7. Code section 4301 states, in pertinent part:

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

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

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17 (l) The conviction of a crime substantially related to the qualifications,
18 functions, and duties of a licensee under this chapter. The record of conviction of a
19 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
20 States Code regulating controlled substances or of a violation of the statutes of this
21 state regulating controlled substances or dangerous drugs shall be conclusive
22 evidence of unprofessional conduct. In all other cases, the record of conviction shall
23 be conclusive evidence only of the fact that the conviction occurred. The board may
24 inquire into the circumstances surrounding the commission of the crime, in order to
25 fix the degree of discipline or, in the case of a conviction not involving controlled
26 substances or dangerous drugs, to determine if the conviction is of an offense
27 substantially related to the qualifications, functions, and duties of a licensee under this
28 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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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Conviction of a Crime)**

3 8. Respondent’s application is subject to denial under Code section 480(a)(1), in that
4 Respondent was convicted of a crime substantially related to the qualifications, functions, or
5 duties of a pharmacy technician. More specifically, on or about July 10, 2019, in the case of
6 *People v. Joseph M. Ensslin Vargas* (Super. Ct. San Joaquin County, Case No. CR-2019-
7 0006916), Respondent was convicted by the Court of violating Vehicle Code section 23152(b)
8 (Driving Under the Influence of Alcohol with a Blood Alcohol Level above 0.08%), a
9 misdemeanor. The circumstances of the crime were that on or about March 23, 2019 at 0224
10 hours, an officer with the California Highway Patrol responded to a report regarding a traffic
11 collision on southbound Highway 99, north of Jack Tone Road. Upon arrival at the scene and
12 investigation of the collision, the Officer determined that Respondent was driving while
13 intoxicated and made an unsafe turning movement resulting in his collision with the highway’s
14 center divide wall. Although Respondent denied driving at the time of the collision, an abrasion
15 on the shoulder of Respondent was consistent with a driver-side seat belt injury while the
16 passenger seat belt, which was locked in the fully retracted position, was consistent with the
17 passenger of the vehicle not wearing a seat belt and the passenger having no abrasions consistent
18 with wearing a seatbelt. This was also consistent with the vehicle passenger’s statement that
19 Respondent was driving at the time of the accident. The Officer observed Respondent to have
20 such heavily slurred speech that the officer could not understand Respondent’s statement.
21 Respondent also had an extremely strong odor of alcohol on his breath and person, red and watery
22 eyes. Respondent failed field sobriety tests, was unable to stand without assistance and was
23 arrested for driving under the influence of alcohol. His tested blood alcohol content at the time
24 was recorded to be 0.21% and 0.19%.

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1 **SECOND CAUSE FOR DENIAL OF APPLICATION**

2 **(Committed Acts Which If Done By A Licentiate**
3 **Would be Grounds for Suspension or Revocation)**

4 9. Respondent’s application is subject to denial under Code section 480(a)(3) in that he
5 committed acts which if done by a licentiate would constitute grounds for discipline for
6 unprofessional conduct under the following Code sections:

- 7 a. Code section 4300(c) (unprofessional conduct), as set forth above in paragraph 8.
8 b. Code section 4301(h) (self-administration of alcohol to the extent of becoming a
9 danger to himself and others), as set forth above in paragraph 8.
10 c. Code section 4301(l) (conviction of a crime), as set forth above in paragraph 8.

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 Joseph Ensslin Vargas, also known as Joseph
15 Ensslinvargas for a Pharmacy Technician license; and,
16 2. Taking such other and further action as deemed necessary and proper.

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18 DATED: December 23, 2019 _____



19 ANNE SODERGREN
20 Interim Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 *Complainant*

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