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

12 In the Matter of the Statement of Issues
13 Against:

14 **GER XIONG**

15 **Pharmacy Technician Registration**
16 **Applicant,**

17 Respondent.

Case No. 7312

STATEMENT OF ISSUES

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19
20
21 **PARTIES**

22 1. Anne Sodergren (Complainant) brings this Statement of Issues solely in her official
23 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

24 2. On or about September 28, 2021, the Board of Pharmacy, Department of Consumer
25 Affairs received an application for a Pharmacy Technician Registration from Ger Xiong
26 (Respondent). On or about September 28, 2021, Respondent certified under penalty of perjury to
27 the truthfulness of all statements, answers, and representations in the application. The Board
28 denied the application on April 12, 2022.

1 **JURISDICTION**

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

5 4. Section 4300, subdivision (c), of the Code provides, in pertinent part, that the Board
6 may refuse a license to any applicant guilty of unprofessional conduct. The Board may, in its sole
7 discretion, issue a probationary license to any applicant for a license who is guilty of
8 unprofessional conduct and who has met all other requirements for licensure.

9 **STATUTORY PROVISIONS**

10 5. Section 480 of the Code provides, in pertinent part:

11 (a) Notwithstanding any other provision of this code, a board may deny a license
12 regulated by this code on the grounds that the applicant has been convicted of a crime or
13 has been subject to formal discipline only if either of the following conditions are met:

14 (1) The applicant has been convicted of a crime within the preceding seven years from
15 the date of application that is substantially related to the qualifications, functions, or duties
16 of the business or profession for which the application is made, regardless of whether the
17 applicant was incarcerated for that crime, or the applicant has been convicted of a crime
18 that is substantially related to the qualifications, functions, or duties of the business or
19 profession for which the application is made and for which the applicant is presently
20 incarcerated or for which the applicant was released from incarceration within the
21 preceding seven years from the date of application

22

23 (b) Notwithstanding any other provision of this code, a person shall not be denied a
24 license on the basis that the person has been convicted of a crime, or on the basis of acts
25 underlying a conviction for a crime, if that person has obtained a certificate of
26 rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3
27 of the Penal Code, has been granted clemency or a pardon by a state or federal executive,
28 or has made a showing of rehabilitation pursuant to Section 482.

(c) Notwithstanding any other provision of this code, a person shall not be denied a
license on the basis of any conviction, or on the basis of the acts underlying the
conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a,
1203.41, 1203.42, or 1203.425 of the Penal Code, or a comparable dismissal or
expungement. An applicant who has a conviction that has been dismissed pursuant
to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code shall provide proof of
the dismissal if it is not reflected on the report furnished by the Department of Justice.

1 (d) Notwithstanding any other provision of this code, a board shall not deny a license
2 on the basis of an arrest that resulted in a disposition other than a conviction, including an
arrest that resulted in an infraction, citation, or a juvenile adjudication.

3 (e) A board may deny a license regulated by this code on the ground that the applicant
4 knowingly made a false statement of fact that is required to be revealed in the application
5 for the license. A board shall not deny a license based solely on an applicant's failure to
disclose a fact that would not have been cause for denial of the license had it been
disclosed.

6 ...

7 6. Section 493 of the Code provides, in pertinent part:

8 (a) Notwithstanding any other law, in a proceeding conducted by a board
9 within the department pursuant to law to deny an application for a license or to
10 suspend or revoke a license or otherwise take disciplinary action against a person
11 who holds a license, upon the ground that the applicant or the licensee has been
convicted of a crime substantially related to the qualifications, functions, and duties
12 of the licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact.

13 (b)(1) Criteria for determining whether a crime is substantially related to the
14 qualifications, functions, or duties of the business or profession the board regulates
shall include all of the following:

15 (A) The nature and gravity of the offense.

16 (B) The number of years elapsed since the date of the offense.

17 (C) The nature and duties of the profession.

18 (2) A board shall not categorically bar an applicant based solely on the type of
19 conviction without considering evidence of rehabilitation.

20 (c) As used in this section, "license" includes "certificate," "permit,"
21 "authority," and "registration."

22 ...

23 7. Section 4301 of the Code provides, in pertinent part:

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

26 ...

27 (h) The administering to oneself, of any controlled substance, or the use of
28 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be

1 dangerous or injurious to oneself, to a person holding a license under this chapter, or
2 to any other person or to the public, or to the extent that the use impairs the ability of
the person to conduct with safety to the public the practice authorized by the license.

3 ...

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 a
6 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 shall
10 be conclusive evidence only of the fact that the conviction occurred. The board may
11 inquire into the circumstances surrounding the commission of the crime, in order to
12 fix the degree of discipline or, in the case of a conviction not involving controlled
13 substances or dangerous drugs, to determine if the conviction is of an offense
14 substantially related to the qualifications, functions, and duties of a licensee under
this 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.

15 ...

16 **REGULATIONS**

17 8. California Code of Regulations (CCR), title 16, section 1769, provides, in
18 pertinent part:

19 ...

20 (b) Denial of a license.

21 (1) When considering the denial of a facility or personal license under Section
22 480 of the Business and Professions Code on the grounds that the applicant has been
23 convicted of a crime, the board will consider whether the applicant made a showing
24 of rehabilitation if the applicant completed the criminal sentence at issue without a
violation of parole or probation. In making this determination, the board will consider
the following criteria:

25 (A) The nature and gravity of the crime(s).

26 (B) The length(s) of the applicable parole or probation period(s).

27 (C) The extent to which the applicable parole or probation period was shortened
28 or lengthened, and the reason(s) the period was modified.

1 (D) The terms or conditions of parole or probation and the extent to which they
2 bear on the applicant's rehabilitation.

3 (E) The extent to which the terms or conditions of parole or probation were
4 modified, and the reason(s) for modification.

5 (2) If the applicant has not completed the criminal sentence at issue without a
6 violation of parole or probation, or the board determines that the applicant did not
7 make the showing of rehabilitation based on the criteria in paragraph (1) or the denial
8 is based on professional misconduct, the board will apply the following criteria in
9 evaluating an applicant's rehabilitation:

10 (A) The nature and gravity of the act(s), professional misconduct, or crime(s)
11 under consideration as grounds for denial.

12 (B) Evidence of any act(s), professional misconduct, or crime(s) committed
13 subsequent to the act(s), professional misconduct, or crime(s) under consideration as
14 grounds for denial under Section 480 of the Business and Professions Code.

15 (C) The time that has elapsed since commission of the act(s), professional
16 misconduct, or crime(s) referred to in subparagraph (A) or (B).

17 (D) Whether the applicant has complied with any terms of parole, probation,
18 restitution or any other sanctions lawfully imposed against the applicant.

19 (E) The criteria in paragraphs (1)(A) through (E), as applicable.

20 (F) Evidence, if any, of rehabilitation submitted by the applicant, including as
21 provided in the board's Disciplinary Guidelines, identified in section 1760.

22 ...

23 9. CCR, title 16, section 1770, states:

24 For the purpose of denial, suspension, or revocation of a personal or facility
25 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
26 Professions Code, a crime or act shall be considered substantially related to the
27 qualifications, functions or duties of a licensee or registrant if to a substantial degree
28 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.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Criminal Conviction)

10 10. Respondent's application is subject to denial under Code sections 4300, subdivision
11 (c), 4301, subdivision (l), and 480, subdivision (a)(1), in that on or about November 2, 2021, in a
12 criminal proceeding entitled *People v. Ger Xiong* in Sacramento County Superior Court, case

1 number 20MI016783, Respondent was convicted on his plea of guilty of a misdemeanor violation
2 of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content (BAC) of
3 .08% or higher), with an admission to the special allegations for one prior DUI conviction
4 (January 30, 2011) and for having a BAC of 0.15% or higher. The parties stipulated that
5 Respondent's blood alcohol content was .15%. The circumstances are that on or about October
6 12, 2020, a Sacramento Police Department officer observed a vehicle with major damage to the
7 driver's side, and performed an enforcement stop on the vehicle because the officer believed the
8 vehicle had been in a major accident. Upon contact with the driver, later identified as Respondent,
9 the officer observed Respondent had bloodshot eyes and smelled strongly of alcohol. Respondent
10 admitted to having consumed "Hennessey" cognac earlier in the day. The officer further observed
11 two open bottles of Hennessey that were each half-full in Respondent's vehicle, and Respondent
12 failed to successfully complete the field sobriety tests as instructed. As a result of his conviction,
13 Respondent was sentenced to probation for three years, ordered to serve twenty-seven days in jail,
14 to pay certain fines and fees, and to complete a 2nd offender DUI program.

15
16 **SECOND CAUSE FOR DENIAL OF APPLICATION**

17 (Dangerous Use of Alcoholic Beverages)

18 11. Respondent's application is subject to denial under Code sections 4300, subdivision
19 (c), and 4301, subdivision (h), in that, as set forth in paragraph 10, on or about October 12, 2020,
20 Respondent consumed alcoholic beverages to the extent, or in a manner, as to be dangerous or
21 injurious to himself and the public.

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PRAYER

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

1. Denying the application of Ger Xiong for a Pharmacy Technician Registration,
2. Taking such other and further action as deemed necessary and proper.

DATED: 8/4/2022

Signature on File

ANNE SODERGREN
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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